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REPORTS OF THE COMMITTEES

HOUSE OF REPRESENTATIVES

IN SENATE

WASHINGTON

GOVERNMENT PRINTING OFFICE

1905

THE
REPORTS OF THE COMMITTEES

OF THE

HOUSE OF REPRESENTATIVES,

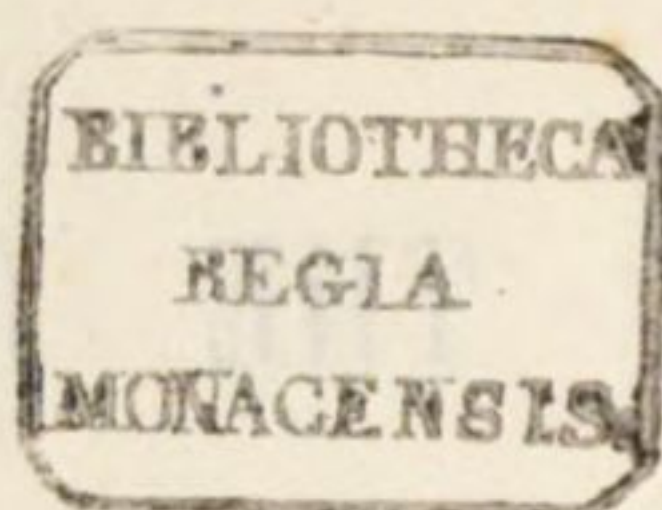
MADE DURING THE

FIRST SESSION THIRTY-NINTH CONGRESS,

1865-'66.

IN THREE VOLUMES.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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FOR

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W. J. MORRIS.

DECEMBER 18, 1865.—Laid on the table and ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom has been referred the petition of W. J. Morris for money lost while he was employed as a scout and spy by Major Generals Curtis and Dodge and Lieutenant General Grant, have had the subject under consideration, and beg leave to report :

The petition is sworn to and presents the following case: That the petitioner has been employed as a scout and spy during the rebellion by the officers above mentioned, and while in said service, and in the line of duty, that he lost, by the exigencies of the service, eight hundred dollars in gold. And again, that the petitioner, while a prisoner, was compelled to pay a rebel colonel the sum of seven hundred dollars in greenbacks in order to procure his release, and escape execution as a spy. The petitioner has presented a letter from Major General Dodge, which acknowledges that he served as a scout and spy, and recommends him, in general terms, to favorable consideration. This letter is indorsed by Lieutenant General Grant, who concludes by recommending that fifteen hundred dollars be paid the claimant.

An oral examination of the petitioner before the committee developed the following facts: That in 1862 the petitioner resided in Texas, and while travelling with his family from Texas to Missouri he was robbed of eight hundred dollars in gold by guerillas; that finally he reached Major General Curtis, in Missouri, and afterwards served as a scout and spy under General Curtis, then under General Grant, and finally under General Dodge, receiving as compensation about one hundred dollars per month.

After these duties had been performed and the claimant discharged from such service, he raised a company of cavalry in Tennessee, and, taking command of it, joined our army during its march upon Atlanta. While thus engaged he was captured, and for his ransom paid a rebel colonel seven hundred dollars. The difference between the claim as stated in the petition and as developed by the examination is very apparent. The petition avers that the losses were sustained while the claimant was performing the hazardous duties of a scout and spy. By the oral examination it appears that the first loss was occasioned by an act of robbery committed by guerillas while the claimant was travelling from Texas to Missouri, and before he had reached the lines of the federal armies, or been employed by federal officers. Having entered the service as a captain after he had been discharged as a scout and spy, and being taken prisoner during this service, he paid seven hundred dollars to procure his release; and this is the basis of his second claim.

The committee is of opinion that neither claim presents any sufficient ground for relief. The first, if allowed, will afford a precedent for paying all the damages committed by the depredations and robberies of guerillas during the rebel-

lion; and the second, if sustained, will furnish an example for reimbursing prisoners of war for all sums expended in order to procure their release, and will embrace in its scope officers and privates. These rules, if adopted, may lead to the expenditure of immense sums, and possibly, in some cases, to the payment of a sum for the ransom of an officer or private which may amount to considerably more than the services of the prisoner were worth to the government.

The committee therefore recommend the adoption of the following resolution:

Resolved, That the claim of W. J. Morris be rejected.

REPORT

The Committee of Claims, to whom was referred the petition of W. J. Morris for money lawfully expended by him in procuring his release from the hands of the enemy, and for the expenses incurred by him in the service of the United States, have the honor to report, that they have examined the same, and find that the same are well founded, and that the petitioner is entitled to the same.

The petition is signed by the petitioner, and is supported by the following facts: That the petitioner was a private in the United States Army, and was captured by the enemy, and was held in captivity for a period of six months. During this time, he expended a large sum of money in procuring his release, and in the service of the United States. The committee find that the expenses incurred by the petitioner are well founded, and that he is entitled to the same.

An oral examination of the petitioner, before the committee, developed the following facts: That in 1861 the petitioner was in the service of the United States, and was captured by the enemy. He was held in captivity for a period of six months, and during this time he expended a large sum of money in procuring his release, and in the service of the United States. The committee find that the expenses incurred by the petitioner are well founded, and that he is entitled to the same.

After the hearing had been rendered, and the evidence in the case had been examined, the committee find that the petitioner is entitled to the money lawfully expended by him in procuring his release, and in the service of the United States. The committee find that the expenses incurred by the petitioner are well founded, and that he is entitled to the same.

The committee is of opinion that neither of the grounds presented by the petitioner for relief is sufficient to entitle him to the money lawfully expended by him in procuring his release, and in the service of the United States. The committee find that the expenses incurred by the petitioner are well founded, and that he is entitled to the same.

SUFFRAGE IN THE DISTRICT OF COLUMBIA.

[To accompany bill H. R. No. 1.]

DECEMBER 19, 1865.—Laid on the table and ordered to be printed.

MR. ROGERS, from the Committee on the Judiciary, submitted the following as his views:

To the House of Representatives :

The subscriber begs leave to present a minority report to the bill entitled "A bill extending the right of suffrage in the District of Columbia," for the following reasons :

There is no more reason now existing that the right of suffrage should be exercised by the negroes of this District than before the war. The men who made the Constitution of the United States did not intend this government for the benefit of the negro race, but made it for the benefit of white men and women and their posterity forever. The declaration of independence was made and the revolutionary war fought for the liberties of the white race. No party as yet has advocated negro suffrage in any presidential election, nor made it an issue in any State or congressional election, until since the rebellion. In fact, it had become a settled notion of the people, firmly established in their minds by a long experience, that the negro race were not sufficiently intelligent to exercise the right of suffrage, and they have not been allowed that right since the formation of the government, except in a few States where they have been permitted to vote upon property qualifications not applied to the white race. It is degrading the people and the District to permit a class of poor weak-minded negroes who have no idea of government, many of whom have just emerged from a state of slavery, to exercise the highest political privilege given to man upon earth—to wit, the elective franchise. The people of this country are opposed to negro suffrage, and have refused to allow it in the States where it has been made an issue.

It can be said, without the fear of contradiction, that there is probably not a State in the Union, except one, that would sanction negro suffrage were the question to be submitted to the people. Even the people of Connecticut, by a large majority, refused it, and the republican party, in all the States except four, where an election was held last fall, declared and proclaimed, through the press and public speakers, their opposition to negro suffrage; and in the four States where that question was an issue, negro suffrage was largely defeated, although the republican ticket was elected. Why should Congress force negro suffrage upon the people of the District, when the people whom they represent have repudiated it in the States? The bill reported by the majority of the committee will, if it becomes a law, not only allow the negroes to vote for all officers in the District, but allow a negro to hold and be elected to any office in the District. By striking out the word, "white," colored people become citizens of the District, with all the political rights of any white citizen of the District. It would place the negro population upon the same political basis as the whites, and would soon result in the election of a negro for mayor of the city, as it is but reasonable

to presume that there would soon be such an influx of negroes into the District as to give them the majority. The "African race" in this country gained more by the result of the war than any other people. By it they were freed from slavery, and with that freedom they ought to be content. The wisdom of more than five thousand years has refused to allow the political equality of the negro race as exercised by the white; and no civilized people of any country have allowed universal suffrage to the negro throughout their governments. If this bill becomes a law it will be but the entering wedge to negro suffrage and equality all over this land.

This question of negro suffrage and political equality in the District ought to be submitted to a vote of the legal voters of the District. We ought not to make a change in the political status of the people of the District without submitting it to them for their rejection or approval. The government of the city is for the benefit and protection of its citizens, and they ought to be consulted, and in no case should so radical a change be made without their consent. To allow the negroes to vote and hold office in the District will be dangerous, and shake, if not destroy, law and order in the District, as the white people cannot be expected to quietly submit to it.

A. J. ROGERS.

DECEMBER 15, 1865.

JOHN BECKER.

JANUARY 11, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of John Becker, submit the following report:

That the petitioner claims damages for the destruction of his garden, fruits, vegetables, and other articles of property, in or near the city of Milwaukie, Wisconsin, during the year 1862, by troops of the United States then stationed there. The petitioner admits this loss to have occurred through the insubordination of the troops, and without any authority from officers. It was the result, therefore, of trespasses or robberies committed by individual soldiers. It has been frequently decided that such injuries, being the result merely of insubordination of private soldiers, do not impose upon the government any liability or any duty to provide compensation for such losses.

The committee therefore recommend that this claim be rejected.

RANDOLPH BENNETT.

JANUARY 11, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Randolph Bennett, submit the following report :

The committee have had under consideration the petition of Randolph Bennett, claiming damages for losses sustained by him under a contract dated 5th March, 1864, with Captain Hilt, United States army, for furnishing cooked rations, which losses are alleged to have been sustained by reason of an advance in prices after the contract was made.

The committee are unable to discover any merit in the claim. It is simply a case where the contractor, according to the statement of the petition, failed to make an advantageous contract with the government. There is no pretence of misrepresentation, fraud, or want of good faith, on the part of the government; and as the petitioner would have been entitled to, and doubtless would have enjoyed, all profits resulting from the contract had it proved advantageous to him, it seems to the committee quite clear that he is entitled to no additional pay because the contract did not prove profitable.

The committee therefore recommend that the claim be rejected.

MAKING OF

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REPORT

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The committee have had under consideration the report of the
investigating committee on the subject of the alleged
fraudulent sale of the property of the late
John D. Rockefeller, and have the honor to report
to the board of investigation the results of their
investigation. The committee find that the
alleged sale of the property of the late
John D. Rockefeller was a fraudulent transaction,
and that the property was sold for less than
its fair value. The committee also find that
the sale was made in violation of the
trust reposed in the late John D. Rockefeller
by the stockholders of the Standard Oil
Company. The committee therefore recommend
that the property be restored to the
Standard Oil Company, and that the
defendants in this case be held liable for the
losses sustained by the company.

F. A. GIBBONS AND F. X. KELLY.

[To accompany H. Res. 36.]

JANUARY 11, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, having had under consideration the claim of Francis A. Gibbons and F. X. Kelly, beg leave to report :

That the case has been heretofore considered by the Court of Claims, who were prevented, as it is alleged, from rendering judgment for the claimants for the amount they found due, by reason of a defect in the petition; but as the claim is clearly within the jurisdiction of the Court of Claims, it is proper that relief should be sought in that tribunal. They therefore recommend the passage of the accompanying joint resolution.

N. A. GIBSON AND M. Z. KELLY

(The committee is the 201)

JANUARY 11, 1902—Continued in 201

See Introduction from the Committee in Chapter I, page 10.

REPORT

The Committee of Claims having had under consideration the report of the
A. Gibson and M. Z. Kelly for 1901.

That the case has been heard in 1901, and the fact that the same was
presented, as it is alleged, that the same was presented in 1901, and
amount they found due by reason of a certain transaction, and as the same
is already within the jurisdiction of the Court of Claims, it is recommended
should be accepted in that case. The committee recommends the payment of
the accompanying joint resolution.

TRANSFER OF COUNTIES TO WEST VIRGINIA.

[To accompany H. Res. No. 17.]

JANUARY 12, 1866.—Ordered to be printed.

Mr. W. LAWRENCE, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred House resolution No. 17, "A joint resolution giving the consent of Congress to the transfer of the counties of Berkeley and Jefferson from the State of Virginia to the State of West Virginia," now report :

That, immediately after the passage of the ordinance of secession by the Virginia convention and the announcement of its ratification, the people of the northern and western portion of the State assembled in convention at the city of Wheeling, and organized a government, and restored the State of Virginia to its allegiance to the Constitution and government of the United States.

This restored government was, for a time, at least, and until recently, recognized by all the departments of the federal government as the lawful and constitutional government of the State of Virginia. Senators, elected by its legislature, and representatives, whose election was certified by its governor, have been received and recognized by Congress as the senators and representatives of the State of Virginia in the Congress of the United States.

Francis H. Peirpoint, who was elected temporary and provisional governor by the convention which assembled on the 11th day of June, A. D. 1861, and was afterwards elected governor by the people under the restored government, still holds his office under that election, has been recognized by all the departments of this government as governor of the State of Virginia, and is now so recognized by the people of Virginia.

On the 20th day of August, A. D. 1861, the Wheeling convention passed an ordinance to provide for the formation of a new State out of a portion of the territory of the State of Virginia.

The first section of the ordinance enumerated the counties which shall compose the new State, and the second section provided that the convention "may change the boundaries described in the first section, so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley, and Jefferson, or either of them, and also such other counties as lie contiguous to said boundaries, or to the counties named in this section," &c.

The convention provided for in the ordinance was elected, and assembled in pursuance of it, and agreed upon a constitution on the 26th day of November, A. D. 1861, which was submitted to the people and ratified by them on the 3d day of May, A. D. 1862. This constitution includes within the new State the counties mentioned in the ordinance, and also Greenbrier, Pocahontas, Hampshire, Hardy, and Morgan, and the county of Pendleton, which lies adjacent to the county of Hardy.

The second section of the first article of the constitution, after naming the counties absolutely made part of the State, provides: "And if a majority of the votes cast at the election or elections held as provided in the schedule hereof, in the district composed of the counties of Pendleton, Hardy, Hampshire, and Morgan, shall be in favor of the adoption of this constitution, the said four counties shall also be included in and form part of the State of West Virginia; and if the same shall be so included, and a majority of the votes cast at the said election or elections in the district composed of the counties of Berkeley, Jefferson, and Frederick, shall be in favor of the adoption of this constitution, then the three last-named counties shall also be included in and form part of the State of West Virginia."

In pursuance of this provision a vote was taken in the counties of Pendleton, Hardy, Hampshire, and Morgan, at the election provided for in the schedule, and a majority of the votes cast at the election were in favor of the adoption of the constitution, and they thereby became and have ever since been recognized as part of the State.

But no vote was taken at this election in the district composed of the counties of Berkeley, Jefferson, and Frederick.

The second section of the act of the legislature of Virginia giving the consent of the State to the formation of the State of West Virginia, passed May 13, 1862, provided:

"That the consent of the legislature of Virginia be, and the same is hereby, given that the counties of Berkeley, Jefferson, and Frederick shall be included in and form part of the State of West Virginia, whenever the voters of said counties shall ratify and assent to said constitution, at an election held for the purpose, at such time and under such regulations as the commissioners, named in said schedule, may prescribe."

On the 13th of December, A. D. 1862, Congress passed an act for the admission of West Virginia into the Union as a State when the convention and people of the State should amend their constitution, by providing for the abolition of slavery in the State, whenever the President, by his proclamation, should announce that such amendment had been duly made and ratified by the people of the State.

In pursuance of this act of Congress the convention which framed the constitution reassembled, and on the 18th day of February, A. D. 1863, adopted the constitution as amended in pursuance of said act. The constitution, as amended, was submitted to the people, and ratified by them on the 26th day of March, A. D. 1863. On the 20th day of April, A. D. 1863, the President issued his proclamation, declaring that the amendment of the constitution provided for by the act of Congress had been made and ratified by the people of the State; that the said State of West Virginia should, after sixty days from the date thereof, be one of the States of the Union.

The convention which framed and amended this constitution, anticipating the possibility that the disturbed condition of the country might prevent a vote from being taken in some of the counties which the people might desire to be included in the new State, made the following provision on that subject in article 4, section 16, of the constitution:

"Additional territory may be admitted into and become part of this State with the consent of the legislature. And in such case provision shall be made by law for the representation of the white population thereof in the senate and house of delegates, in conformity with the principles set forth in this constitution. And the members of which each branch is to consist shall be increased by the representation assigned to such additional territory."

Owing to the military operations in the counties of Berkeley and Jefferson, no vote could be taken in these counties under the ordinance calling the conven-

tion, under constitutional provision, or under the act of the legislature of Virginia of May 13, 1862.

But the legislature of Virginia, still determined that these counties should have an opportunity of going into the new State, if the people desired it, on the 31st day of January, A. D. 1863, passed the following law :

AN ACT giving the consent of the State of Virginia to the county of Berkeley being admitted into and becoming part of the State of West Virginia.

Whereas, by the constitution for the State of West Virginia, ratified by the people thereof, it is provided that additional territory may be admitted into and become part of said State, with the consent of the legislature thereof, and it is represented to the general assembly that the people of the county of Berkeley are desirous that said county should be admitted into and become part of the said State of West Virginia :

1. *Be it enacted by the general assembly*, That polls shall be opened and held on the fourth Thursday of May next, at the several places for holding elections in the county of Berkeley, for the purpose of taking the sense of the qualified voters of said county on the question of including said county in the State of West Virginia.

2. The poll-books shall be headed as follows, viz : " Shall the county of Berkeley become a part of the State of West Virginia ? " and shall contain two columns, one headed " aye " and the other " no," and the names of those who vote in favor of said county becoming part of the State of West Virginia shall be entered in the first column, and the names of those who vote against shall be entered in the second column.

3. * * * * * And the governor of this State, if of opinion that the said vote has been opened and held, and the result ascertained and certified pursuant to law, shall certify the result of the same, under the seal of this State, to the governor of the said State of West Virginia.

4. * * * * *

5. If a majority of the votes at the polls opened and held pursuant to this act be in favor of the said county of Berkeley becoming part of the State of West Virginia, then shall the said county become part of the said State of West Virginia when admitted into the same with the consent of the legislature thereof.

And on the 4th day of February, 1863, the legislature of Virginia passed the following :

AN ACT giving consent to the admission of certain counties into the new State of West Virginia, upon certain conditions.

1. *Be it enacted by the general assembly of Virginia*, That at the general election on the fourth Thursday of May, one thousand eight hundred and sixty-three, it shall be lawful for the voters of the district composed of the counties of Tazewell, Bland, Giles, and Craig, to declare, by their votes, whether said counties shall be annexed to and become a part of the new State of West Virginia ; also, at the same time, the district composed of the counties of Buchanan, Wise, Russell, Scott, and Lee, to declare by their votes whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia ; also, at the same time, the district composed of the counties of Alleghany, Bath, and Highland, to declare by their votes whether the counties of such last-named district shall be annexed to and become a part of the State of West Virginia ; also, at the same time, the district composed of the counties of Frederick and Jefferson, or either of them, to declare by their votes whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia ; also, at the same time, the district composed of the counties of Clarke, Loudoun, Fairfax, Alexandria, and Prince William, to declare by their votes whether the counties

of the said last-named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Shenandoah, Warren, Page, and Rockingham, to declare by their votes whether the counties of the said last-named district shall be annexed to and become part of the State of West Virginia; and for that purpose there shall be a poll opened at each place of voting in each of said districts, headed "For annexation," and "Against annexation." And the consent of this general assembly is hereby given for the annexation to the said State of West Virginia of such of said districts, or either of them, as a majority of the votes so polled in each district may determine: *Provided*, That the legislature of the State of West Virginia shall also consent and agree to the said annexation; after which, all jurisdiction of the State of Virginia over the districts so annexed shall cease.

2. It shall be the duty of the governor of the Commonwealth to ascertain and certify the result as other elections are certified.

Polls were opened in the counties of Berkeley and Jefferson in accordance with the provisions of the above acts, and the result certified by the governor of Virginia to the governor of West Virginia, as follows:

THE COMMONWEALTH OF VIRGINIA,
Executive Department.

His Excellency A. I. BOREMAN, *Governor of West Virginia*:

Whereas it is represented to me that, in pursuance of an act of the general assembly of Virginia, entitled "An act giving the consent of the State of Virginia to the county of Berkeley being admitted to and becoming part of the State of West Virginia," passed January 31, 1863, polls were opened in said county on Thursday, the 28th day of May, 1863, for the purpose indicated in said act:

Now, therefore, I, Francis H. Peirpoint, governor of the Commonwealth of Virginia, in accordance with a provision of the act aforesaid, do hereby certify that, from the returns on file in this department, a very large majority of the votes cast at said election were in favor of the said county of Berkeley "becoming part of the State of West Virginia."

Given under my hand and the less seal of the Commonwealth this 22d day of July, 1863, and in the 88th year of the Commonwealth.

[SEAL.]

F. H. PEIRPOINT.

By the Governor:

L. A. HAGANS, *Secretary of the Commonwealth.*

THE COMMONWEALTH OF VIRGINIA,
Executive Department.

His Excellency A. I. BOREMAN, *Governor of West Virginia*:

Whereas it is represented to me that, in pursuance of an act of the general assembly of Virginia, entitled "An act giving consent to the admission of certain counties into the new State of West Virginia," upon certain conditions, passed February 4, 1863, polls were opened in the county of Jefferson (one of the counties named in said act) on Thursday, the 28th day of May, 1863, on the question of annexation to the said new State:

Now, therefore, I, Francis H. Peirpoint, governor of the Commonwealth of Virginia, in accordance with a provision of the act aforesaid, do hereby certify that, from the returns made to this department, a very large majority of the votes cast at said election were in favor of annexation to the State of West Virginia.

Given under my hand and the less seal of the Commonwealth, at the city of Alexandria, this 14th day of September, 1863, and in the 88th year of the Commonwealth.

[SEAL.]

F. H. PEIRPOINT.

By the Governor:

L. A. HAGANS, *Secretary of the Commonwealth.*

It will be seen from the foregoing acts of the legislature, and the reports of Governor Peirpoint, of the result of the vote, that the laws authorizing the vote, and the vote taken under those laws, were all before the 20th of June, 1863, when West Virginia became a State. It was therefore supposed by the senators and representatives of West Virginia in Congress, that inasmuch as West Virginia was not a State, and had not the capacity to enter into any "compact or agreement" with the State of Virginia, that the action of the State of Virginia in providing the means of transferring these counties to the State of West Virginia, and giving her assent to such transfer, was not a "compact or agreement," within the meaning of the Constitution of the United States, and that therefore no ratification by Congress was necessary to the validity of the transfer.

It was also supposed that inasmuch as the constitution of the State made an express provision for the acquisition of these counties on a vote of the people, and had in express terms authorized the acquisition of additional territory by the consent of the legislature, all of which have been approved and ratified by Congress in admitting the State into the Union, that no further ratification could be required.

On the 5th of August, 1863, the State of West Virginia accepted the transfer of the county of Berkeley, as follows:

AN ACT admitting the county of Berkeley into and making the same part of this State.
Passed August 5, 1863

Be it enacted by the legislature of West Virginia: 1st, the county of Berkeley, lately constituting part of the Commonwealth of Virginia, is hereby admitted into and made part of this State, and shall constitute part of the tenth senatorial district and of the tenth judicial circuit, and shall at an election herein provided for, and at every annual State election thereafter, choose two members of the house of delegates.

On the 2d of November, 1863, the county of Jefferson was in like manner accepted by the following act:

AN ACT admitting the county of Jefferson into and making the same part of this State.
Passed November 2, 1863

Be it enacted by the legislature of West Virginia: 1st, the county of Jefferson, lately constituting part of the Commonwealth of Virginia, is hereby admitted into and made part of this State, and shall constitute part of the second congressional district of the tenth senatorial district and of the tenth judicial circuit; and shall, at the election herein provided for, and at every annual State election thereafter, choose two members of the house of delegates.

Since the passage of these laws, West Virginia has exercised exclusive and undisputed jurisdiction over these counties. They have been organized into townships under the laws of West Virginia. Justices, constables, and supervisors have been elected, and are discharging the duties of their respective offices. Taxes have been assessed, collected, and disbursed, according to the laws of West Virginia. Courts, civil and criminal, have been exercising jurisdiction, rendering judgments, issuing executions, selling property, real and personal, and making titles thereto.

Offenders against the laws have been convicted and sentenced to fines and imprisonment in the county jail and in the penitentiary.

Wills have been probated and recorded, estates settled, and distribution made. In short, all the acts of municipal sovereignty known to the Constitution and laws of the country have been exercised without interference or interruption for between one and two years.

But as doubts have been recently thrown over this transfer of allegiance and jurisdiction, the State of West Virginia, for the purpose of removing all doubts, and settling what is claimed to be a controverted question, asks Congress to ratify the action of the States of Virginia and West Virginia, in transferring the counties from the old State to the new one.

On the other hand, the State of Virginia asks Congress to provide for taking *another vote* of the people of the two counties on the question of transferring them from the State of Virginia to the State of West Virginia; and this is asked upon the ground that a full vote was not polled at the former election.

Your committee do not understand that it is claimed that all might not have voted if they had chosen to do so. But many of those who would have voted against the transfer of these counties to West Virginia were absent in the rebel army, and therefore could not vote. Others who were at home and might have voted did not recognize the restored government as the legal and constitutional government of Virginia, and therefore declined to pay any respect to its laws, or the order of its governor.

But if Congress were inclined to respect the wishes of those who desire another vote, by what authority may we enter the boundaries of a State and order a portion of its people to vote upon the question of transferring their allegiance to another State? For that these counties are now *de facto* a part of the State of West Virginia is a matter about which there can be no controversy.

Not only has the State of West Virginia exercised jurisdiction over them, as has already been stated, but the President and the executive departments of this government have also recognized them as a part of the State of West Virginia. The Postmaster General establishes post offices and appoints postmasters at various places in the county of Berkeley and in the county of Jefferson, in the "State of West Virginia."

Since the transfer of these counties to the State of West Virginia, the Secretary of the Treasury, by order of the President, has transferred them from the third internal revenue collection district of the State of Virginia to the second collection district of the State of West Virginia.

A short time previous to the last general election in the State of Virginia, the governor of West Virginia ascertained that a portion of the people of Jefferson county intended to hold an election in that county under the laws of Virginia, and cast their votes for candidates for office in that State. He immediately issued his proclamation, forbidding any person from attempting to hold elections in that county under the laws and government of the State of Virginia. Fearing that this proclamation might be disregarded, he called upon the President for a military force to aid him in enforcing obedience to his proclamation. The President promptly responded to the call, and in pursuance of his order the Secretary of War ordered a body of troops to be sent to Charlestown, in Jefferson county, to enforce obedience to the governor's proclamation. The troops were sent and the proposition to hold an election under the laws of Virginia was wisely abandoned.

It seems to your committee that these acts constitute a most perfect and unequivocal recognition of the transfer of these counties to the State of West Virginia by the President and the executive departments of the federal government.

If Congress is to take measures for having another vote on the transfer of these counties, what shall we do? Shall Congress pass a law fixing the time, place, and manner of holding the election, and prescribe the qualifications of

voters? If so, by what authority? If not, shall we pass a law requiring the governor of West Virginia to have an election held at such time, place, and manner as he may prescribe?

Suppose he disregards our mandate, and refuses to hold any election or to permit one to be held, what is Congress to do about it?

The information in possession of the committee leaves no doubt on their minds as to what would now be the result of a vote for the restoration of these counties to the State of Virginia. The question is one which has since the close of the war entered largely into the local politics of these counties. The party which styles itself the "Union party," and is called by its opponents the "radical party," is unanimously in favor of retaining these counties in West Virginia; while the democratic, or, as it styles itself, the "conservative party," is generally in favor of restoring them to the State of Virginia.

At the annual election held on the fourth Thursday of October, A. D. 1865, the Union ticket received in Berkeley county 923 votes, and the so-called democratic 137 votes; and in the county of Jefferson, the vote as returned by the supervisors of the county to the governor was for the Union ticket 304 votes, and for the so-called democratic ticket 199 votes.

At this election the "test oath," prescribed by the laws of West Virginia, which prohibits any person from voting who shall refuse to make an affidavit that he has not been in the rebel army, nor voluntarily given any aid or comfort to the rebellion, was rigidly enforced in the county of Berkeley, and also in the county of Jefferson, so far as the votes were counted and returned by the supervisors of the county.

In an election for the transfer of these counties to the State of Virginia, the vote in favor of West Virginia would certainly be quite as large, and probably larger than the vote for the Union ticket at the late election, while the vote in favor of the State of Virginia could not be larger, and would probably fall short of the vote for the so-called democratic ticket. This, we think, appears from petitions to Congress on this subject now before the committee.

But it is claimed by the so-called democratic party that the "test oath" is unconstitutional, and wherever they have the control of the elections it would, undoubtedly, be disregarded.

If the whole population, loyal and disloyal, should vote, the result would be that from three hundred to four hundred votes would be added to the so-called democratic vote in Berkeley, and a still larger number in Jefferson; and Berkeley county would remain with West Virginia, and Jefferson county would go with the State of Virginia. This is a result which it is presumed nobody would desire. The great thoroughfare for trade and travel of these two counties is the Baltimore and Ohio railroad. Their business relations are with Baltimore and Wheeling. They have no direct railroad or other connexions with Richmond or any other part of the State of Virginia, except the valley counties adjacent to them. And it is certainly not desirable to multiply or increase the number of State jurisdictions that are to have authority over so important a thoroughfare as the Baltimore and Ohio railroad.

Your committee cannot conceive how any good can result from another vote, while the postponement of the final settlement of the question cannot fail to be productive of strife, and animosity, and discord, very prejudicial to the best interests of the community.

It is perfectly clear to your committee that Congress has no power to institute any measures or proceedings to change the boundaries of adjacent States, or to transfer territory from one to another. The States alone can make any changes in their boundaries or transfer territory from one to another, and Congress has no power over the subject except to ratify what they may do; and certainly, the power to ratify implies the power to refuse to ratify.

In the case of *Green vs. Biddle*, 8 Wheaton, 1 to 108, the Supreme Court

of the United States had before it the clause of the Constitution which prohibits any two or more States from entering into any compact or agreement without the consent of Congress. The compact before the court in that case was the compact between the States of Virginia and Kentucky, preparatory to the admission of the latter State into the Union.

The compact was contained in an act of the legislature of Virginia, passed December 18, 1789, and incorporated into the constitution of Kentucky as an article of compact. This compact was never expressly ratified by Congress. But the court held that the admission of Kentucky into the Union with this clause in her constitution was an implied ratification of the compact.

In discussing this subject the court say, page 85: "Let it be observed, in the first place, that the constitution makes no provision respecting the mode or form in which the consent of Congress is to be signified; very properly leaving that matter to the wisdom of that body." Hence the people of West Virginia claim that by the admission of that State into the Union, with section 16, article 4, in her constitution, Congress consented to the acquisition of these counties, and that no subsequent ratification is necessary to the validity of the transfer.

In the case of *Georgia vs. Florida*, 17 Howard's Rep., 478, the court decide that the power of changing boundaries, or transferring territory from one State to another, is one of the essential attributes of sovereignty which was not surrendered by the States of the Union in adopting the Constitution of the United States.

But for the purpose of protecting the interests of the United States from being prejudiced by interstate arrangements, the consent of Congress was required to make any compacts or agreements between two or more States valid.

Your committee therefore are clearly of opinion that the only power Congress has over the subject is to ratify the transfer, or decline to take any action on the subject, and leave the parties to the courts to determine the legal effect of what has been done.

If it be true, as claimed by the State of West Virginia, that the action of the States of Virginia and West Virginia is not a "compact or agreement," within the meaning of the Constitution, or that the admission of the State by Congress into the Union with a constitution which expressly provided for the acquisition of these counties, as well as for the acquisition of "additional territory," is such consent on the part of Congress as makes the transfer of these counties valid, certainly Congress has no power to transfer them back again without the consent of West Virginia.

Your committee are aware that since the commencement of the present session of Congress the body styling itself the legislature of Virginia has repealed the acts of Virginia giving her consent to the cession of these counties to the State of West Virginia.

But the repeal comes too late even if said legislature was such *de jure*, which the committee are by no means prepared to admit. No principle of law is better settled than that *an executed grant cannot be revoked by the grantor without the consent of the grantee*.

If a man gives his house to another and delivers the possession to the donee, the title passes, and the donor cannot revoke the gift and reclaim the property.

So if a man grant another an easement in his land, as the right to erect a dam and flow the water back upon it, or to have a right of way across it, and the grantee accept the grant, and incur expenses in building his dam or making his road with the knowledge of the grantor, and without objection from him, he cannot afterwards revoke the grant without the consent of the grantee.

The same principle is applicable to the grant of a franchise. Even since the great case of *Dartmouth College vs. Woodward*, 4 Wheaton, 518, it has been recognized as settled law that the grant of a franchise to a private corporation,

upon the faith of which capital has been invested or expended, cannot be revoked or repealed by the legislature without the consent of the corporation.

If a legislature grant to a corporation power to erect, enclose, or maintain a college, to build a railroad, or turnpike, or exercise banking powers, and money is expended by the corporation upon the faith of the grant, the law cannot be repealed, or the grant revoked, without the consent of the corporation, unless the right of repeal is reserved in the charter.

Numerous laws have been passed by the legislatures of the various States of the Union, granting to the United States exclusive jurisdiction over certain places for the erection of forts, arsenals, and dock-yards. Can these laws be repealed and the grant of exclusive jurisdiction revoked? We suppose this will hardly be claimed.

The States of Maryland and Virginia granted to the United States exclusive jurisdiction over the ten miles square originally composing the District of Columbia. When Virginia wanted to reclaim the jurisdiction over the portion ceded by her, she did not claim the right to revoke the grant and resume the exercise of jurisdiction without the consent of the United States; but she applied to Congress to retrocede the jurisdiction over her portion of the District, and in form it was done, though its constitutionality is yet to be determined. The transfer of sovereignty may be the exercise of an irrevocable power. The power when exercised may be regarded as *functus officio*. The Constitution does not provide for the revocation of sovereignty transferred.

But if the State of Virginia may repeal the laws and revoke the grant of jurisdiction over the counties of Berkeley and Jefferson to the State of West Virginia, why may she not repeal the law and revoke her consent to the creation of the State of West Virginia?

If it be said that the transfer of sovereignty and jurisdiction over the counties of Berkeley and Jefferson is incomplete for want of the ratification of Congress, we answer that it is not necessary that a grant should be formal and perfect, to invest the grantee with rights of which the grantor cannot divest him. No matter however informal or irregular a grant may be, if it is made and accepted in good faith, and the grantee incurs expenses on the faith of it, it confers an equity upon the grantee, which a court of chancery will protect and enforce.

These parties have done everything in their power to complete this transfer of sovereignty and jurisdiction, and if it is still incomplete and imperfect, it is no fault of theirs.

It has been executed and acted upon, and the rights acquired and liabilities incurred upon the faith of the grant affect the peace and quiet of a community of more than 20,000 people.

Your committee therefore submit that the State of Virginia cannot now disturb the peace and happiness of this community by repealing the law and revoking the grant of jurisdiction.

And your committee are clearly of opinion that any action of Congress that would postpone, and leave open to question and controversy, the status of these counties would only increase the bitterness and strife which already exist.

The effect of delay and uncertainty cannot fail to be to foster and encourage a spirit of insubordination and disloyalty wholly inconsistent with the peace and good order of the community.

Your committee therefore recommend the passage of the joint resolution.

PILOTS IN GOVERNMENT EMPLOY.

JANUARY 18, 1866.—Laid on the table and ordered to be printed.

Mr. DARLING, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs having been instructed by the House "to inquire into the justice and expediency of providing by law that all pilots engaged in the gunboat or other naval service of the government during the late war shall be deemed to have been 'officers' within the terms of the rules and regulations of the service on that subject, and entitled to the same extra pay and rations as other officers in the same service whose monthly compensation was the same, and report by bill or otherwise," submit the following report :

That any further or new legislation on the subject is inexpedient.

The committee find on investigation that a very large proportion of the persons intended to be benefited by further legislation were, and are now, living in the States lately in rebellion, were prior to the late war engaged in piloting vessels in the civil service in those States, and were in many instances forced into the service of piloting the war vessels of the United States against their wishes, although they were generally out of employment. The committee also find that it is not just or expedient to class such persons with those officers of the navy who volunteered their services in behalf of the government, and they submit that if there are any exceptions to the rule above stated, such cases can only be reached by special legislation.

The committee also find that all persons employed in the service specified in the resolution have been as well paid by the government as they were before or have been since in the civil service; and that so far from having been injuriously affected by the war, their business was generally increased, and in many instances they have been materially benefited.

WILLIAM WALLACE.

JANUARY 18, 1866.—Ordered to be printed.

Mr. BENJAMIN, from the Committee on Invalid Pensions, made the following

R E P O R T .

The Committee on Invalid Pensions, to whom was referred the petition of William Wallace, submit the following report :

The petitioner states that he was a soldier in the war of 1812; was wounded in the battle of Bridgewater in 1814, and first obtained a pension in 1854 for a three-fourths disability in consequence of said wound. He alleges that his disability has now become total, and asks for a back pension of eight dollars a month from July, 1814 to 1854, the date of the commencement of his present pension, and also a full pension of eight dollars a month from this time, to continue during his natural life.

The committee is of opinion that so much of said petition as asks for a back pension be denied, and that it be discharged from the further consideration of that portion which prays for an increase of his present pension, for the reason that existing laws are believed to be ample for his relief if his disability has become total, as set forth in his petition.

WILLIAM WALLACE

January 10, 1897

The Honorable John D. Long, Secretary of the Interior

Washington, D. C.

Dear Sir: I have the honor to acknowledge the receipt of your letter of the 7th inst.

in relation to the application of the National Park Service to the land owned by the State of California, and in reply to inform you that the same has been referred to the proper authorities for their consideration.

I am, Sir, very respectfully,
Yours very truly,
John D. Long

MRS. MARY McLAIN.

JANUARY 18, 1866.—Ordered to be printed.

Mr. TAYLOR, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Mrs. Mary McLain, widow of the late Captain Charles McLain, of the 211th regiment Pennsylvania volunteers, submit the following report :

The committee find that Captain Charles McLain was killed while in the line of his duty, on the 2d day of April, 1865, in front of Petersburg, while acting as lieutenant colonel of his regiment. The widow now asks that her pension may be increased to what would have been allowed had her husband been actually mustered into the service as lieutenant colonel. The committee are of opinion that to allow this claim the way would be opened for thousands of claims of a similar nature, and notwithstanding the particular merit in this case it would establish a precedent likely to encourage the making of a multitude of such claims, which it would be difficult to deny ; for it is well known that during the late war it was a very common occurrence that privates often acted as non-commissioned officers, non-commissioned officers as line officers, line officers as field officers, and field officers as general officers.

For these reasons the committee feel constrained to report adverse to the prayer of the petition.

CLAIMS FROM CITIZENS OF STATES LATELY IN REBELLION.

JANUARY 18, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims ask leave to make the following report :

The attention of the House is called to the large number of claims from citizens of States lately in rebellion, growing out of the destruction of, or damage to, property by the army or navy while engaged in suppressing the insurrection.

The committee are impressed with the necessity of establishing a rule, by the House, which shall guide them in deliberating upon this class of claims. The number of cases from this source is so great as to render it hardly possible for the committee to examine the particulars of each one with the care and scrutiny necessary to prevent fraud and imposition against the government, provided there be sufficient grounds to demand the favorable attention of Congress. The dimensions and duration of the war, and the persistence with which the rebellion was maintained, rendered it necessary for the army of the loyal government to make large destructions of property, and also to make use of considerable property, in States in rebellion, for necessary supplies and subsistence. This destruction and appropriation was a military necessity, imposed upon the government in order to put down rebellion and to save the life of the nation.

The committee are unable to give the House any definite information as to the quantity or value of the property thus destroyed or appropriated ; but it is suggested that an attempt to indemnify and compensate this numerous class of claimants will require an amount of appropriations much greater than the revenues of the nation, at this time, can possibly satisfy.

It seems to the committee, therefore, that the House should determine, by its action, whether these claims should be assumed, whereby the national debt must be increased to an indefinite extent.

The previous action of Congress and of the various committees who, from time to time, have had this subject under consideration, does not, in our opinion, establish such principles nor furnish such precedents as are necessary for the government of the committee in making recommendations under the new and important circumstances now surrounding the question. Heretofore, the amount of claims at any time resting upon the government for such losses has been limited, so as not to exceed the resources of the government under reasonable and permissible taxation ; and hence a disposition has often been exhibited by both Congress and the various Committees of Claims to equalize burdens and losses by paying such demands. But this disposition has not uniformly existed, and many instances of the rejection of such claims are found in the history of the legislation of the government. The persistence, however, with which claimants have renewed their applications when rejected has frequently enabled them to finally succeed, and often under circumstances which rendered their suc-

cess of doubtful propriety. Appeals to our sympathy, humanity, and benevolence are not easily resisted, and it is a credit to human nature that we are so constituted as to be accessible to such appeals. It is to be remembered, however, that such appeals ought *not to induce* and *cannot authorize* us to levy extraordinary taxation upon our constituents in order to gratify our charitable impulses. We are not *almoners* merely *for the nation*, and have no just right to impose increased taxation in order to gratify our feelings of benevolence, nor to establish principles of abstract justice and equity, when there is no rule or law requiring it, and particularly when the attempt is to be attended with great uncertainty, and be subjected to innumerable impositions and frauds.

Neither do the committee find any very well-settled principles, in regard to a nation's liability to pay for this class of losses, laid down by the commentators on national law. Where the claimants are of undoubted loyalty, and the damage has resulted from the appropriation of private property for the use of the government, or by way of precaution, in order to repel the enemy, it is the opinion of Vattel that the damages should be paid. But for other damages, caused by inevitable necessity, that writer says: "They are misfortunes which chance deals out to the proprietors on whom they happen to fall. The sovereign, indeed, ought to show an equitable regard for the sufferers, if the situation of his affairs will admit it, but no action lies against the state for misfortunes of this nature for losses which she has occasioned not wilfully, but through necessity and by mere accident. The same may be said of damages caused by the enemy. All the subjects are exposed to such damages, and woe to him on whom they fall. The members of a society may well encounter such risks of property since they encounter a similar risk of life itself. Were the state strictly to indemnify all those whose property is injured in this manner, the public finances would soon be exhausted, and every individual in the state would be obliged to contribute his share in due proportion—a thing utterly impracticable. Besides, these indemnifications would be liable to a thousand abuses, and there would be no end of the particulars. It is, therefore, to be presumed that no such thing was ever intended by those who united to form a society."

These remarks are quoted because of their apparent applicability to the question presented. It seems to the committee that the magnitude of the public debt created to suppress the rebellion renders it impossible for the government to attempt to compensate all those who have sustained individual losses by the action of our army in the field. The attempt would impair the national credit abroad, destroy confidence in the public securities everywhere, impose such additional burdens of taxation as to give cause for discontent and complaint, and thereby lead to the possible encouragement of such evil-minded persons as may be led to favor the policy of *repudiation*.

The committee are therefore of the opinion that, in view of the magnitude of these losses, as well as the magnitude of the public debt, and the thousand abuses necessarily resulting from an attempt to satisfy these claims, in the words of Vattel, "the thing is utterly impracticable," and ought not to be encouraged.

It may be suggested that a distinction should be made between losses arising out of the destruction of property incident to the ravages of war and damages growing out of the appropriation of property for the uses of the army. Without controverting the propriety of this distinction, so far as citizens of the loyal States are concerned, it is suggested that it will be dangerous and inexpedient to apply it to claims coming from States lately in rebellion. It will be difficult to determine with a sufficient degree of certainty the question of individual loyalty; and if it be established, as a rule, that property taken from loyal citizens, in rebellious States, for military supplies, shall be paid for, it may be conceded that every claimant will find *some* proof to present of his devotion and suffer-

ing in the cause of the government. The examinations before a committee are necessarily *ex parte*, consisting mostly of the affidavits of persons as to whose character for truth and honesty little can be known.

The committee call the attention of the House to an act of Congress, approved July 4, 1864, entitled "An act to restrict the jurisdiction of the Court of Claims," &c., which deprived that court of any jurisdiction of claims against the United States growing out of the destruction, or appropriation of, or damage to property by the army or navy engaged in the suppression of the rebellion. It was scarcely the policy of this law to transfer the adjudication of this class of claims from the court to Congress, for the second and third sections of the act provide that the claims of loyal citizens in States not in rebellion, for supplies and subsistence actually furnished the army and receipted for, or taken by officers without giving receipts, may be adjusted and allowed by the Quartermaster and Commissary Generals, respectively. In the light of this act, it seems to have been the policy of the authors that the claims of loyal citizens, in loyal States, for supplies to the army, should be paid; and that the government should not be held liable for any such claim coming from citizens of States in rebellion, nor liable for any claim coming from any portion of the country which resulted merely from the ravages of war; at least, not without an act of Congress for the payment of it.

The committee think that the policy of this act, as they understand it, should be strictly adhered to; that the necessities of the nation demand that we attempt to pay no claim growing out of the destruction of or damage to property by the necessities of the war, nor any claim for property furnished to or taken by military officers, except as the same is now provided for by the act referred to.

The committee therefore recommend the adoption of the following resolution:

Resolved, That until otherwise ordered, the Committee of Claims be instructed to reject all claims referred to them for examination, by citizens of any of the States lately in rebellion, growing out of the destruction or appropriation of or damage to property by the army or navy while engaged in suppressing the rebellion.

REPRESENTATION.

(To accompany H. Res. No. 51.)

JANUARY 22, 1866.—Ordered to be printed.

Mr. ROGERS, from the Committee on Reconstruction, submitted the following as his views :

To the honorable members of the House of Representatives :

Minority report of Andrew J. Rogers, one of the committee of fifteen on reconstruction, against the joint resolution proposing an amendment to the Constitution of the United States, to regulate representation among the several States.

As the subscriber was the only member who, in committee, voted against said resolution, he deems it due to himself, this House, and the country, that he should make known the reasons for his opposition to it; and therefore he submits to your honorable body the following as reasons why this House should reject the proposed change in the organic law. It is dangerous to the liberties of the people and the rights of the States to amend or change the organic law as established by our fathers.

The old Constitution brought the people of this country to a state of prosperity at home and consideration abroad unequalled in the history of the world.

Under it the population of this country increased from three to thirty millions, foreign wars were successfully prosecuted, and as long as it was sustained as the supreme law of the land, public and private liberty was secure, and the blessings of domestic peace and prosperity were enjoyed by the people for more than seventy years.

It is the life of the virtue, wisdom, and courage of the fathers of the republic, and is a bright jewel of civil liberty, intended by its framers to be handed down to their posterity unimpaired forever, as a precious relic of the intelligence, judgment, and patriotism of our departed patriots and sages.

As it now is, it provides for representation in the following language, to wit :

“Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.”

The resolution now before the House directs that taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed; which resolution contains the proviso, that whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons of such race or color shall be excluded from the basis of representation.

This amendment is violative of the great aim and object of our fathers, that representation and taxation should always go together.

Taxation without representation caused our fathers to rebel against their mother country, marshal armies, throw into the water at Boston and New York

the tea, and set in motion the first machinery of war, which, after a seven-years struggle, ended in the success of that great doctrine, that taxation without representation was iniquitous, despotic and unjust.

Taxation and representation, or no taxation without representation, lies at the very bottom of our Union, and is the foundation-stone upon which all the pillars of American liberty and independence rest.

Our present Constitution does not base representation at all upon the voting population, but upon all free persons and three-fifths of the slaves. Before slavery was abolished representation to the States was much more liberal under it than since, because representation was allowed for three-fifths of a population that were not persons, citizens, or people within the meaning of the organic law, as decided by the Supreme Court of the United States in the Dred Scott case.

There is now no representation but for free persons.

This amendment infringes upon the sovereign and reserved right of a State to regulate the qualifications of voters, and is especially oppressive to the southern States, where there is a large population of colored people, in this: that it tends to coerce the States to adopt the pernicious, wicked, and debasing dogma of the ruling party, to wit, unqualified negro suffrage, and visits upon the States as a penalty for their refusal a deprivation of representation for a portion of their population.

For instance, the four southern States where the colored population predominates over the white in numbers would be deprived of one-half of the present representation to which they are now entitled under the Constitution.

In all the States all persons of color are under our present organic law entitled to representation, and the result of this amendment is to deprive all the States of representation for the colored population, unless they allow that population unqualified suffrage.

Massachusetts extends to the negroes unqualified suffrage, and under this amendment would be entitled to representation for all her colored population; while the empire State of New York, that allows negroes to vote who have a certain property qualification, would be deprived of all representation for the colored population, even for those who are allowed qualified suffrage.

A State under this amendment, in order to have any representation for colored people, must grant to them unqualified suffrage, as any abridgment of the suffrage to the negroes forfeits all right to have them included in the basis of representation, while it allows the States to entirely disfranchise all their white population and still have them included in the basis of representation; so that, in the four States where the negroes are in the majority, if unqualified suffrage should be allowed, they could disfranchise every white man, and still have all the white people included in the basis of the representations of such States. A State, under the present organic law, may impose upon its electors such qualifications as it deems best.

This amendment does not alter the organic law in this particular so far as it relates to white people; but so far as it relates to colored people, it inflicts a penalty upon the States for refusing unqualified suffrage to the negroes.

It does not compel the States to adopt negro suffrage, and is therefore not against the letter of the Constitution, which leaves the States to judge of the qualifications of voters; yet it is against the spirit of the Constitution and the reserved rights of the States, and is therefore unconstitutional in attempting to control the sovereign domain of the States, by depriving them of representation on account of the exercise of their sovereign powers, as no amendment can legally take away from a State any sovereign reserved power without its consent.

This places the negroes in a better position than the white people, because it visits upon the States a penalty for qualifying the right of suffrage to negroes that it does not for qualifying that right to white people.

The disfranchising of one single negro, or qualifying the right of suffrage to him, on account of race or color, forfeits all right to representation for all or any of the negro population.

The object of this amendment is to establish universal and unqualified negro suffrage throughout the whole Union; and instead of boldly and openly meeting that issue, it attempts to deceive the people by inflicting a severe penalty upon the States that refuse unqualified suffrage to the colored race, and the result will be that before the States will part with this valuable right of representation, those of them in which the negroes are not in the majority will grant to them unqualified suffrage.

The States are compelled to protect and support this colored population, and be taxed for them, yet they cannot have representation for the black race unless they grant to them unqualified suffrage. This is despotism pure and simple.

Unnaturalized persons, women, and persons under twenty-one years old, cannot vote, yet they are all to be counted in the basis of representation. Why not exclude such persons from the basis of representation, unless they are allowed to vote?

Another objection to this amendment is, that it is not to be submitted to the people for their ratification or rejection. All power ought to emanate from the people, and no organic law ought to be passed without their consent.

Congress refused to admit the Territory of Kansas as a State under the Le-compton constitution because it was not submitted to the people. All States, of late, have been compelled to submit their organic laws to the people. A legislature of a State is not the people of the State. The spirit of the age and the wisdom of half a century have verified the maxim, that the right of self-government demands that the people, as citizens, should be consulted upon all changes in an organic law.

The organic law provides two ways of submitting an amendment to it—one to submit it to conventions of the States, and the other to the legislatures of the States. The question involved in this amendment was not an issue when the present legislatures were elected. By submitting it to conventions, the people act directly upon it in the election of the delegates, and in that way they could decide for themselves whether they wanted the organic law so amended as to eventually compel the States to adopt unqualified negro suffrage. It would be an expression of the people, if ratified, by way of advice at least to the States, to adopt unqualified negro suffrage.

All which is most respectfully submitted.

ANDREW J. ROGERS.

ALEXANDER H. COFFROTH AND WILLIAM H. KOONTZ.

JANUARY 26, 1866.—Laid on the table and ordered to be printed.

Mr. UPSON, from the Committee of Elections, made the following

R E P O R T .

The Committee of Elections, to whom were referred the certificates and all papers relating to the election in the sixteenth congressional district of Pennsylvania "with instructions to report, at as early a day as practicable, which of the rival claimants to the vacant seat from that district has the prima facie right thereto, reserving to the other party the privilege of contesting the case upon the merits, without prejudice from lapse of time or want of notice," having considered the said certificates and papers so referred, submit the following report :

It appears from the said certificates and papers so referred, that Alexander H. Coffroth and William H. Koontz each claims to have the *prima facie* right to the vacant seat in question, and each of said claimants has appeared in person before the committee and also by attorney, and been heard in support of his respective claim.

By the general election law of Pennsylvania, (Purdon's Digest, 8th ed., 1853, pages 287, 288, 289, 293, sections 59, 60, 63, 64, 65, and 113,) when two or more counties compose a district for the choice of a member of the House of Representatives of the United States, it is provided, after an election has been held, that the judges of election in each county having met, the clerks shall make out a fair statement of all the votes which shall have been given at such election, within the county, for every person voted for as such member, which shall be signed by said judges and attested by the clerks; (section 63,) and one of the said judges is to take charge of said certificates of votes, and produce the same at a meeting of one judge from each county, at such place in such district as is, or may be, provided by law for that purpose. The judges of the several counties (composing such district) having met as aforesaid, are then required (section 64) to cast up the several county returns and make duplicate returns of all the votes given for such office of representative in Congress in said district, and of the name of the person elected, and to deposit one of said returns for said office of representative in the office of the prothonotary of the court of common pleas of the county in which they shall meet, and to place the other return in the nearest post office, sealed and directed to the secretary of the Commonwealth.

The said return judges are also required (section 65) to transmit to the person elected to serve in Congress a certificate of his election, within five days after the day of making said return.

On the receipt of the return of the election of members of the House of Representatives of the United States, as aforesaid, by the secretary of the Commonwealth, the governor is required (section 113) to declare by proclamation the names of the persons so returned as elected in the respective districts, and also to transmit, as soon as conveniently may be thereafter, the returns so made to the House of Representatives of the United States.

The sixteenth congressional district of Pennsylvania is composed of the counties of Adams, Bedford, Franklin, Fulton, and Somerset.

The governor of Pennsylvania, in his proclamation of the date of December 26, 1864, declaring the names of the persons returned as elected in the respective congressional districts in said State, omitted to declare the name of any person as returned elected in the sixteenth district, as appears from the certified copy of said proclamation accompanying this report, (paper 1,) referred to the committee, but states therein "that no such returns of the election in the sixteenth congressional district have been sent to the secretary of the Commonwealth, as would, under the act of assembly of July 2, A. D. 1839, authorize me to proclaim the name of any person as having been returned as duly elected a member of the House of Representatives of the United States for that district." Said act of July 2, 1839, is the law hereinbefore referred to.

Neither of the claimants, then, having any *prima facie* right to the seat, under the governor's proclamation, the committee next proceeded to examine the official return made by the return judges of said district of all the votes given for said office of representative in Congress in said district as cast up by said judges from the returns from the several counties therein.

The committee found among the papers so referred to them two papers, (papers 2 and 4,) each on its face purporting to be such return, and might have been in some doubt as to which was the genuine official return, each being signed by a different set of return judges, save that the name of Nathan Winter is affixed to each as the return judge from Fulton county, and the paper purporting to be a return in favor of Mr. Coffroth (paper 4) is signed by only four judges, while the paper purporting to be a return in favor of Mr. Koontz is signed by five; but they were relieved from any doubt on this subject by the admissions of the respective claimants made before the committee, and by the statement of facts contained in the opinion of the attorney general of Pennsylvania, Mr. Meredith, submitted to the governor of said State on this same point, which opinion (page 32) each of the claimants laid before the committee and admitted in evidence, so far as the statement of facts therein given is concerned, for their consideration and action in determining the question of the *prima facie* right of the claimants to the vacant seat.

Aided by the light thus thrown upon the case, the committee were unanimously of opinion that the persons signing the said return in favor of Mr. Koontz were not the legally constituted board of return judges for said district, and had no lawful authority to make any such return, and that the four persons signing the said return in favor of Mr. Coffroth were a majority of the legal return judges, and the only lawful board.

It was admitted that both the so-called boards met and acted on the same day, but the Koontz board a little earlier in the day than the other; both on the day and at the place fixed by law. Four of the five legal return judges, therefore, being found to have certified (paper 4) that Mr. Coffroth had received 9,475 votes, and Mr. Koontz, 8,462 votes, and that Mr. Coffroth had "received a majority of all the votes cast as counted before the board, and is declared duly and legally elected a member of the House of Representatives of the United States," and that he had been awarded a certificate of election, it is difficult to explain why this return, thus made and certified by these return judges, does not show a *prima facie* right in Mr. Coffroth to the seat in question.

But it is claimed on the part of Mr. Koontz that the said return shows on its face that the county of Somerset was not included by the said return judges in the count, and, therefore, that the return is void, though it also appears in the return, and also in the opinion of the attorney general, above referred to, that the return judge of Somerset county was present at Chambersburg on the day of the meeting, and was notified thereof, but neglected or refused to attend.

The attorney general, in his said opinion, (page 32,) also takes this position, and claims that the district judges ought to have adjourned over, and referred to duplicate originals of the returns for Somerset county, which he says were accessible in the office of the prothonotary of said county of Somerset.

To this it may be replied, that the statute makes no provision for any such adjournment or proceeding, and it does not appear by the said statute that, in case where a congressional district is composed of several counties, any such duplicate original is required to be filed in each of the counties of the district, but the original statement of votes given in each county for representative in Congress, certified by the judges and attested by the clerks, is directed (section 63) to be taken charge of by one of said judges, who "shall produce the same at a meeting of one judge from each county at such place in said district as is or may be appointed by law for that purpose;" and when the district return judges have met and cast up said returns, and made duplicate returns of all the votes given for such office in such district, it is then, and not till then, required (section 64) that one of said duplicate returns so made by said district return judges shall be filed in the office of the prothonotary of the court of common pleas of the county in which they shall meet.

The return judge of Somerset county, therefore, in thus absenting himself from the meeting of the board, and withholding from the other legal return judges the returns from his county, and in thus co-operating with an illegal board in endeavoring to give a certificate to Mr. Koontz, was manifestly acting in direct violation of law, and in disregard of his official duty.

It is now claimed on behalf of Mr. Koontz that this voluntary neglect of duty on the part of his friend, the return judge of Somerset county, shall be made to redound to his benefit, and that he shall in fact be placed in a better position than if said judge had done his duty; for it appears that if the actual vote of Somerset county (paper 6) had been handed in by said judge to said board and added to the other returns made to the board, and included in their computation, the result would still have been the same, and in favor of Mr. Coffroth.

The aggregate returns before the board, from all the counties composing the district, would then have been as follows:

	Coffroth.	Koontz.
Adams	2, 707	2, 366
Bedford	2, 504	2, 053
Franklin	3, 457	3, 508
Fulton	807	535
Somerset	1, 592	2, 512
Total	11, 067	10, 974

Leaving Coffroth a majority of 93 on the face of the official returns from all the counties of the district.

In addition to this we have also the certificate of the return judges, (paper 16,) transmitted to Mr. Coffroth as required by law, (section 65,) being the official certificate of his election, which in the omission apparent on the face of the governor's proclamation would seem to *prima facie* entitle him to the seat. The certificate of Mr. Koontz (paper 15,) being signed, as we have seen, by persons not legal return judges, is, of course, wholly illegal and void.

It is difficult to perceive the correctness or force of the reasoning which, while recognizing the majority of the return judges as the legal board and competent to act, yet in effect makes all their acts illegal and void, because one of the return judges of the district voluntarily neglected or refused to attend the meeting

of the board and withheld from the board the returns from his county ; thus in effect allowing a minority of one a sort of veto power over the majority.

The return certified by the majority certainly embraces the counties of Adams, Bedford, Franklin, and Fulton, and is an official certificate of all the returns presented, and of the aggregate returns of votes from these counties ; and as the vote of Somerset county is undisputed and would not have changed the result, we see no occasion or justification, on a *prima facie* hearing, for going beyond the action of these return judges who met on the day and at the place fixed by law, and did all that the law required them to do.

If, however, we should waive this position and go beyond, not behind, the action of the district return judges, it would only be to ascertain the vote of Somerset county ; and that being obtained and added to the other certified returns, as we have seen, still gives Mr. Coffroth the certified majority of all the votes cast in the district and the *prima facie* right to the seat.

Clearly the district board of return judges had no right to go behind the certified returns brought by each return judge from his county, and in determining a *prima facie* right to a seat the same rule would seem applicable to and binding upon the Committee of Elections and the House. But suppose we should see fit, in violation of this rule, to go behind the action of the district return judges, we come then next to the certified returns of the several boards of county return judges of each county in the district, which returns were not separately before the governor. In three of these, (papers 5, 6 and 7,) viz., Franklin, Somerset and Fulton, all of the return judges unite in certifying the result, and the claimants each admitted before the committee, that on this hearing of a claim to the *prima facie* right to the seat, neither of them could go behind any one of these three returns thus certified.

The home vote of Bedford county is also certified (paper 8) by all of the return judges, and is undisputed by the claimant, but the soldiers' vote of Bedford county is certified by a majority of the return judges, (paper 9,) as 318 for Koontz, and 94 for Coffroth, while the minority of the return judges sign another return, (paper 10,) which, of course, is of no validity.

A majority of the return judges of Adams county certify to the returns of votes cast in that county, including the soldiers' vote, (paper 11,) giving Coffroth 2,707 votes, and Koontz 2,366.

The minority sign another return, purporting to include the home vote and the soldiers' vote, (paper 13,) but nothing appears on the face of the majority return, from either Adams or Bedford county, to show but what they constitute the whole board of return judges present for each of said counties.

Taking the majority return of the soldiers' vote in Bedford, and add to the return of the whole board of the same county of the home vote, and the majority return of the whole vote in Bedford county, and the unanimous return of the return judges from Franklin, Fulton, and Somerset, and on the face of those returns the vote is as follows, viz :

	Coffroth.	Koontz.
Adams	2, 707	2, 366
Bedford	2, 504	2, 058
Franklin	3, 457	3, 508
Fulton	807	535
Somerset	1, 592	2, 512
	11, 067	10, 979

Coffroth's majority, on the face of these certified returns from the return judges of these several counties composing the sixteenth congressional district, it will be seen, is 88, and he still has the *prima facie* right to the seat.

But it is claimed on the part of Mr. Koontz that all the return judges in each county must sign and certify the returns of that county; that the judges must act as a unit, and that if they do not so unite in signing the certificate, the certificate is void and the return invalid. A similar position was taken by a democratic district board of return judges of the counties of Franklin, Fulton, Bedford, and Somerset, composing the sixteenth judicial district of Pennsylvania, in regard to a return of soldiers' votes for judge, certified by the majority of the county return judges of Bedford, the same as in this case, (paper 9,) and said district return judges assumed to reject the return of soldiers' votes for judge, so certified by the majority of the return judges of Bedford county, because said return was not signed by the remaining nine return judges of said county, and in this way overcame the majority for King, the Union candidate for judge, and gave the certificate to Kimmel, the democratic candidate, but included in their return a statement of this soldiers' vote, and the fact of their action in regard to it.

The governor referred the matter to the attorney general, and Mr. Meredith, on the 30th of November, 1864, in giving his opinion, uses the following language:

"The district return judges of the sixteenth judicial district, composed of the counties of Franklin, Bedford, Somerset, and Fulton, have transmitted to the secretary of the Commonwealth a return, in which they state that they have not included the Bedford county return of soldiers' votes, a copy of which they annex, and they assign as the reason for not including it that said return was not certified to by nine of the return judges of Bedford county. The return in question is signed by thirteen of the county return judges, forming therefore a majority of the whole number.

"*The reason assigned for not including this return is palpably insufficient.* As the authority of the return judges concerns matters of a public nature, a majority may act at a meeting lawfully assembled, and their meeting is presumed to be lawful in the absence of proof to the contrary. The clause of the 79th section of the act of 1839, providing that the returns shall be signed by all the judges present, does not govern the present case; and if it did, it would, 1st, be construed as directory merely; and, 2d, it would be presumed that the return was signed by all the judges present in the absence of proof to the contrary."

A similar opinion, as to the power of a majority of the return judges to act in certifying returns, is given by said attorney general in the paper hereinbefore referred to, (paper 32,) and the majority of the committee fully concur in this opinion of the said attorney general of Pennsylvania, and consider a return, certified by a majority of the county return judges, as a good and valid return. In the case of the judge, above referred to, the governor, acting upon the opinion submitted to him by the attorney general, counted the vote thus certified by the majority of the county return judges, a copy of it being contained in the return certified to the secretary of the Commonwealth, considering said certificate as valid under the laws of Pennsylvania, and as showing a *prima facie* right in Mr. King to the seat; and he accordingly awarded it to him by issuing to him the commission. This precedent would seem to be conclusive of this case. But neither the attorney general nor any other party in the case of the said district judge ever claimed the right on a *prima facie* case to go behind the return of a majority of the county return judges and inquire what other soldiers' votes or returns of votes, if any, had been rejected or not counted by them, much less to claim that a certificate of the minority of said return judges was of any legal authority, or was original evidence for any purpose on the investigation of a *prima facie* right.

But it is claimed, on the part of Mr. Koontz, not only that the act of the majority of the county return judges in certifying these returns from Adams

and Bedford is void, but that the Committee of Elections and the House, in this investigation of the *prima facie* right to the seat, may not only go behind these returns from Adams and Bedford, but also in effect behind the unanimous returns of all the other counties of Franklin, Fulton, and Somerset, so far as the soldiers' vote is concerned. The statement of such a proposition on an investigation of this kind would seem to be sufficient for its own refutation. It would be attempting to hear the case on the merits, without giving the claimants the opportunity of presenting their evidence in full; would be utterly disregarding all credentials, and would obliterate all distinction between a *prima facie* right on the certificates and papers from the proper certifying officers and a claim founded on the merits on a full hearing of all the evidence that might be adduced by either claimant in support of his claim. (See case of Jayne vs. Todd, vol. 1, page 1, Reports of Committees, 1st session 38th Congress.)

It should be borne in mind that by the resolution of the House referring this case to the committee, the committee are restricted in their first examination and report to the *prima facie* right of either claimant to the seat; and the committee are to determine this from the certificates and papers referred to them, including always the admissions of the claimants themselves before the committee; but only those papers are to be considered which come from the proper certifying officers, and which those officers are authorized by law to make, and also which are pertinent to the case.

Many papers have been referred to the committee, which, on this hearing, are not evidence for any purpose.

From the legal certificates and returns of the district and county boards of return judges in this case, nothing appears in relation to the rejection of any soldiers' votes; and those who allege such rejection are compelled to look outside of these certificates and returns and resort to papers and statements, which are not legitimate evidence on this investigation, and which, without further proof, would few, if any of them, be evidence of themselves on the hearing of a contest on the merits.

It is claimed on the part of Mr. Koontz that the county board of return judges of Bedford county improperly rejected or omitted to count two of the returns (papers 19, 20, and 21) of soldiers' votes for that county; and that the return judges of Adams county also illegally rejected or failed to count eight of the returns (papers 22, 23, 24, 25, 26, 27, 28, and 30) of soldiers' votes for that county; and that if these votes had been counted he would have had a majority of the votes for representative in Congress, cast in the district.

While the committee are clear in their opinion that on this examination of the matter specifically referred to them in this case they have no right to go behind the official returns of the proper certifying officers, and especially not behind the returns of the county return judges, and that those certificates and returns in this case show that Mr. Coffroth has the *prima facie* right to the seat, and they so find and report, yet they will add that on an inspection of the papers presented before them on behalf of Mr. Koontz, purporting to be returns of soldiers' votes, on which he relies, they are satisfied that most of those so-called returns are, under the act of Pennsylvania of August 25, 1864, regulating elections in case of soldiers in actual military service, too defective on their face to pass a legal scrutiny, and were not entitled to be counted by the county return judges even if they had all been before said county return judges at the time of their meeting; for, while the said act is in some of its provisions liberal, and says (section 27) that "No mere informality in the manner of carrying out or executing any of the provisions of this act shall invalidate any election held under the same, or authorize the return thereof to be rejected," &c., yet there are many other provisions in regard to the manner of holding the elections, the appointing and qualifying election officers, the recording and certifying the oaths administered to them before entering upon their duties, the mode of keep-

ing and certifying the poll-books and tally-lists showing the name and precise residence of each voter and the number of votes cast, and the mode of certifying and authenticating the returns of such vote, which are essential and material, (sections 2, 4, 5, 6, 7, 9, 10, 13, 14, 15, 16, 17, 18, 28, 32, 33, and 34,) and which must be substantially complied with to carry out the letter, spirit, and intent of the act, preserve the purity of elections, and properly guard the exercise of the elective franchise. The very language of the section quoted—"No mere informality," &c., (section 27)—necessarily implies that where there has not been a substantial compliance with any of the material requirements of the act, and which is apparent on the face of the papers themselves, then the returns are to be rejected, or set aside at least until an investigation is had on a contest on the merits.

One of these so-called returns for Bedford county, of an election claimed to have been held at Barracks No. 1, Soldiers' Rest, Washington, D. C., shows on the poll-book the names of only forty-eight electors as voting, which list is certified by the clerks and judges as correct; and yet the same clerks and judges of election return an aggregate of eighty-seven votes as cast for representative in Congress, or thirty-nine more votes than electors voting, which is manifestly an absurd and illegal return, and should not and could not have been counted by the county return judges. The return also gives no company or regiment (section 7) to which the soldiers belong, nor states any facts or circumstances to bring them within any of the special provisions of section 2 of the act, which could authorize them to open a poll or hold an election there.

So also the poll-book in the other so-called return for Bedford county, purporting to be for company H, 208th regiment, (paper 19,) shows only thirty-six electors from Bedford county, while the return gives fifty-six votes for representative in Congress. If it be claimed that the poll-book shows the names of electors from other counties, it is a conclusive reply that the law (section 7) expressly says that "Separate poll-books shall be kept, and separate returns made, for the voters of *each city or county*;" and we see no authority given to the return judges of Bedford county to count votes cast for other counties, and especially when, as in the case of this last return, some of the electors reside in counties not within the congressional district.

Of the eight alleged as rejected returns for Adams county, the three from the hospitals, viz: Mower, Cuyler, and McClellan, (papers 23, 24, 25,) are by all the committee admitted to be too defectively certified and authenticated to be entitled to any consideration. The law in relation to the certifying, signing, and returning with the poll-book the evidence of the administering the oath to the officers of the election (sections 5 and 15) was wholly disregarded. (See also on this point the case of Blair *vs.* Barrett, Bartlett's Contested Election Cases, page 315, and cases there cited.) So also in the case of company C, 202d regiment, (paper 22,) where only one judge of election appears to have been appointed, or sworn, or acted, the committee were alike unanimous in their opinion that the return was invalid, (sections 4 and 5,) the law expressly requiring three. (See also Howard *vs.* Cooper, Bartlett's Contested Election Cases, page 282.) The returns of company I, 210th regiment, (paper 35,) do not show that two of the judges or the clerks were sworn, a certificate of which the law (sections 5 and 15) expressly requires. (See also case of Blair *vs.* Barrett, above cited.) The returns for companies B and G, 138th regiment, (paper 39,) show that these two companies voted together at one poll and having the same election officers, both judges and clerks. The law (section 2) directs that a poll shall be opened in each company, and that all electors belonging to such company, and within one mile of the quarters on the day of election, and not prevented by orders, &c., from returning to the quarters, shall vote at such poll. The return shows officers of both companies participating in the election, indicating regular company organizations, and does not set forth any of

the facts to bring the electors within any of the exceptional clauses of the statute, (sections 2, 32, and 33.) The returns for company B, 21st Pennsylvania cavalry, either show the judges and clerks of election to have been sworn before one James Mickley, who was not an officer of the election and had no authority (section 5) to administer such oath, or else that neither of the judges or clerks of election were sworn, and in either case is in violation of the law, (sections 5 and 15.) The poll-book or list of electors voting at said election is not certified as required by law, (section 15,) nor were separate poll-books kept or separate returns made (section 7) for the voters of each city or county; but it would appear from what is claimed to have been intended for a list of the electors that there were forty-four whose names and residences are given—four from Franklin county, one from York, and thirty-nine from Adams county—while forty-one votes are certified as cast for representative in Congress, being two more than there were electors for Adams county.

The remaining return for Adams county, company K, 184th regiment, (paper 30) being 21 for Coffroth and 39 for Koontz, would not, if it had been counted, have changed the result, but would still have left a majority of 70 for Mr. Coffroth. There are other objections which might be raised as to the legality of many of said returns so presented, but the foregoing are instanced as apparent on a first inspection. How many of these objections might be removed by other evidence on a full hearing upon the merits the committee are not now called upon to say, nor do they know what the facts may be which relate to the validity of the elections so held, and as to which the returns appear to be so defective. But these returns, whether legal or not, are not proper to be considered on this investigation. When on a contest on the merits the facts may be fully developed, if any legal votes are found to have been omitted in the count, full and final justice may then be done both to the voters and to the respective claimants; but until such an investigation is had, the committee, on the question of a *prima facie* right to the seat, feel constrained to abide by those precedents and rules of law which experience has proved to be the safest guides in weighing and determining impartially questions of this nature.

The committee therefore recommend the adoption of the following resolutions:

Resolved, That Alexander H. Coffroth, upon the certificates and papers relating to the election in the sixteenth congressional district of the State of Pennsylvania, has the *prima facie* right to the vacant seat from that district, and is entitled to take the oath of office and occupy a seat in this house as the representative in Congress from said district, without prejudice to the right of William H. Koontz, claiming to have been duly elected thereto, to contest his right to said seat upon the merits.

Resolved, That William H. Koontz, desiring to contest the right of honorable Alexander H. Coffroth to a seat in this house as a representative from the sixteenth district of the State of Pennsylvania, be, and he is, required to serve upon the said Coffroth, within fifteen days after the passage of this resolution, a particular statement of the grounds of said contest, and that the said Coffroth be and he is hereby required to serve upon the said Koontz his answer thereto within fifteen days thereafter, and that both parties be allowed sixty days next after the service of said answer to take testimony in support of their several allegations and denials, notice of intention to examine witnesses to be given to the opposite party at least five days before their examination, but neither party to give notice of taking testimony within less than five days between the close of taking it at one place and its commencement at another, but in all other respects in the manner prescribed in the act of February 19, 1851.

CHARLES UPSON.
H. L. DAWES.
PORTUS BAXTER.
S. S. MARSHALL.
WM. RADFORD.

VIEWS OF THE MINORITY.

Mr. PAINE submitted the following minority report :

The undersigned, a minority of the Committee of Elections, dissenting from the conclusions of the majority, in the case from the sixteenth district of Pennsylvania, ask leave to submit the following statement.

The right to represent the sixteenth district of the State of Pennsylvania in the thirty-ninth Congress is claimed by Alexander H. Coffroth and William H. Koontz. Neither of the claimants was admitted to the House at its organization, but the case was referred to the Committee of Elections by the following resolution :

“ *Resolved*, That the certificates and all other papers relating to the election in the sixteenth congressional district of Pennsylvania be referred to the Committee of Elections, when appointed, with instructions to report, at as early a day as practicable, which of the rival claimants to the vacant seat from that district has the *prima facie* right thereto, reserving to the other party the privilege of contesting the case upon the merits, without prejudice from lapse of time or want of notice.”

In order to render our statement intelligible, we annex, as part of it, an exhibit of the statutory provisions of the State of Pennsylvania applicable to the election of representatives in Congress, to which frequent reference will be made.

If the House contemplated in the resolution such a *prima facie* right as would have authorized the Clerk to place the name of one or the other of the claimants on the roll of the House at its organization, we are of the opinion that neither claimant had *such* a *prima facie* right. The proclamation of the governor (paper 1) would manifestly be the best, if not the only evidence of such a right, under the federal and State laws applicable to the case. (42* and U. S. Stat. at Large, vol. xii, p. 804.) But that proclamation, while it does show that certain representatives from that State were elected according to the laws of the State, does not show that either of the claimants was so elected. On the contrary, it expressly shows that no such returns had been received as would authorize the governor to proclaim the election of any representative in the sixteenth district.

Probably the return of the board of district judges, transmitted in accordance with the statute of Pennsylvania, (39* and 43*,) by the governor, to the House of Representatives, would also establish such a *prima facie* right, if unimpeached, provided it were accompanied by proper proof that the election was held in accordance with federal or State laws.

It is possible that the certificate of election which the district board is required (41*) to transmit to each person elected to serve in Congress, if satisfactorily authenticated and unimpeached, would also establish such a technical right, provided it were, at the same time, properly shown that the election was held in accordance with State or federal laws.

But neither by a return of the district board to the secretary of the Commonwealth, nor by a certificate of that board to either of the claimants, has *such* a *prima facie* right been shown, in this case, before the committee. Each claimant presents a paper purporting to contain the return of the district board, showing his election. Paper 4 is Mr. Coffroth's return ; paper 2 is Mr. Koontz's return. Each claimant also presents a paper purporting to be a certificate by

the district board of his election. Paper 16 is Mr. Coffroth's certificate; paper 15 is Mr. Koontz's certificate. To Mr. Coffroth's return (paper 4) there are five objections:

1. It is evident that it does not, in itself, satisfy the law of the United States, which permits the Clerk to place on the roll, at the organization of the House, "the names of such persons only whose credentials show that they were regularly elected, in accordance with the laws of their States, respectively, or the laws of the United States." Nor is there, in our judgment, any supplementary proof before the committee which, if coupled with the paper, would have authorized the Clerk to place his name on the roll of the House in compliance with this law. The legitimate evidence upon the question whether Mr. Coffroth was regularly elected in accordance with the laws of the State of Pennsylvania or of the United States will be particularly considered in our examination of another branch of the case.

2. This return lacks the authentication which would be essential to it as the basis of such a *prima facie* right. It neither bears upon its face such authentication, nor is it so authenticated by any other lawful evidence before the committee. It bears neither the great seal of the State, nor any other official seal recognized by the act of Congress relating to the authentication of public acts and records. It is not authenticated, as a lawful return, by an accompanying official certificate or act of the governor, or of any other officer; but, on the contrary, is repudiated by the governor in his official proclamation. It has not the sanction of an official transmittal by the governor to the House of Representatives, as evidence of an election under the law of the State, (43*.) The official character of those who sign it is not admitted by Mr. Koontz. On the contrary, he denies it, and maintains the legality of the rival district board, from which emanates his own return, upon grounds which we shall soon have occasion to examine. Indeed, if this *were* admitted, it would evidently be a dangerous precedent for the Clerk to give one claimant the power to authenticate, by his own mere *admission*, the original credentials of another, and so place his name on the roll at the organization of the House.

3. This return is contradicted and neutralized as a basis for such a *prima facie* case as we are now considering, by the official proclamation (paper 1) of the governor of Pennsylvania, which was transmitted to the Clerk of the House, and constituted the credentials of the members now representing that State. The following is an extract from that proclamation: "No such returns of the election in the sixteenth congressional district have been sent to the secretary of the Commonwealth as would, under the act of assembly of 2d July, 1839, authorize me to proclaim the name of any person as having been returned as duly elected a member of the House of Representatives of the United States for that district." And it is shown by the official statement of facts made by the attorney general of the State of Pennsylvania, (paper 32,) and used as one of the proofs before the committee, that the return of Mr. Coffroth (paper 4) was before the governor when he issued the proclamation.

4. The return in favor of Mr. Coffroth (paper 4) stands confronted by a return in favor of Mr. Koontz. (Paper 2.) Leaving out of view all extrinsic proofs, and looking only at the faces of the two returns, we find the return in favor of Mr. Koontz to be better than that in favor of Mr. Coffroth. Indeed, if the return of a district board could, standing alone, secure a *prima facie* right to a seat, it is certain that the return in favor of Mr. Koontz would, if it stood alone, give him such right. It is also equally certain that the return of Mr. Coffroth, standing alone, could not give him that right. If the return in favor of Mr. Coffroth (paper 4) purports to be the return of the election in the sixteenth district of Pennsylvania, so does the return in favor of Mr. Koontz. (Paper 2.) If the former purports, in the body of the instrument, to be the return of a majority of the district judges of that district, representing four of

the five counties, so does the latter purport to be the return of all the district judges of that district, representing all of the five counties. If the former purports to show the signatures and seals of four judges, representing four of the counties, so does the latter also purport to show the signatures and seals of five judges, representing all the counties of the district. If the former was presented to the governor, and insisted upon as the basis of his proclamation in favor of Mr. Coffroth, so also was the latter presented to him, and insisted on as the basis of his proclamation in favor of Mr. Koontz. If the latter is neutralized by the governor's proclamation, so also is the former. In none of these particulars is Mr. Koontz's return inferior to Mr. Coffroth's. In some of them it is superior. But in one other point of comparison the return which confronts Mr. Coffroth is immensely superior to his own. It purports to be a return of *all the votes* cast for members of Congress in all of the five counties of the district in strict compliance with the law, while Mr. Coffroth's return purports to be a return of the votes of only four of the five counties. And this brings us to our main objection to the return.

5. It is, in our judgment, a fatal defect in the return presented in favor of Mr. Coffroth that it does not purport to be a full return of all the votes given in the district for representative in Congress. The law provides that "the judges of the several counties, having met as aforesaid, shall cast up the several county returns, and make duplicate returns of *all the votes* given for such office in said district, and of the name of the person or persons elected." But the return shows that the votes of four counties only were cast up; that the vote of the county of Somerset was not counted; that "Alexander H. Coffroth, having a majority of all the votes cast, *as counted before the board*, is declared duly and legally elected;" and that "the county of Somerset was not represented by a judge or otherwise at the meeting."

We concur in the opinion of the attorney general, (paper 32,) that, for this last reason, the return of Mr. Coffroth was so essentially defective as to be no return at all, and was no proper basis for the governor's proclamation. For the same reason, as well as for the others already given, we are of the opinion that it constituted no lawful basis of a claim for a place on the roll at the organization of the House. We shall soon have occasion to inquire whether it is valid to any extent or for any purpose.

We now come to the examination of the return of the board of district judges presented in favor of Mr. Koontz. Its defects have already been incidentally considered. It is true that it purports, on its face, to be a full return of the votes of all the five counties of the sixteenth district, and to have been signed and sealed by five judges constituting a full board, and was presented to the governor as a basis for a proclamation in favor of Mr. Koontz. But neither alone nor coupled with any legal supplementary proof before the committee would it satisfy the act of Congress relating to the credentials of members. Moreover, its authentication is as defective as that of Mr. Coffroth's return; it is confronted by the return of a rival claimant, and is contradicted and neutralized by the proclamation of the governor, whose official duty it was to proclaim which of the returns, if either, was valid. In our judgment, then, Mr. Koontz has made, by this return, no such *prima facie* case as would have authorized the Clerk to place his name on the roll at the organization of the House.

The two certificates of election (papers 15 and 16) purporting to have been addressed, each by a district board, to the claimants, respectively, are probably both regular in form, (41*,) but neither can support a *prima facie* claim to the contested seat for the following reasons: Neither complies with the statute relating to credentials, whether taken by itself or coupled with other proofs before the committee. Neither is authenticated, each is contradicted by the other, and both are destroyed by the proclamation of the governor. (Paper 1.) Moreover,

the certificate (paper 16) in favor of Mr. Coffroth is contradicted by the return (paper 4) given in his favor by the same district board; for the certificate contains a recital that the board had "counted the votes cast in said district," whereas the return explicitly shows that they did not count the votes of Somerset county. But it is doubtful whether these certificates, which are not required by law (41*) to contain any statement of the votes cast, and were manifestly intended by the legislature as mere notifications to the members elect, should, in any case, be elevated to the dignity of credentials at the organization of the House.

We are of the opinion, therefore, that neither of the claimants has established such a *prima facie* right as would have authorized the clerk to place his name on the roll of the House at its organization. This would dispose of the case if it was the intention of the House to instruct the committee to report which claimant had such a strict *prima facie* right; but we do not so understand the resolution. We understand the House to have required the committee to report which claimant, if either, was, by the certificates and papers referred, without additional confirmatory or contradictory proofs, shown to be entitled to the disputed seat.

The state of facts established by the proofs will be more intelligible if preceded by a brief abstract of the subjoined statutory provisions of the State of Pennsylvania, exhibiting the various stages of the process by which the expression of the will of the qualified electors of a congressional district of that State is transmitted from the ballot-boxes to this house. This is accomplished by four successive official acts:

1. The election boards, by whom the home and military polls are actually conducted, (1*, 2*, 15*,) send returns of the elections, held by them, to the boards of county return judges, (5*, 6*, 26*, 27*, 28*.)

2. The several county boards of return judges send aggregate returns of the home and military vote, for their respective counties, to the district board of judges, (37*, 38*.)

3. The district board sends an aggregate return of the vote for the district to the secretary of the Commonwealth, (39*, 40*.)

4. The governor issues his proclamation, or transmits the district board return to this house, (42*, 43*.)

The return of each of the precinct boards, by whom the home polls are conducted, is sent to the county board by a judge, who presents them in person, (5*, 6*, 8*.) The return of the board by whom a military election is conducted is not sent to the county board by a judge in person, for the exigencies of the military service would not permit that, but is sent to the county board by mail, or express, (or by a commissioner appointed by the governor,) through the office of the prothonotary of the county, (28*.) The reasons for the provision by which the military returns, instead of being sent directly from the army to the county board, are sent to the prothonotary's office and by him certified to the county board, are very obvious.

The county boards are required to count all the returns, (as well those from the military polls as those from the home precincts,) excepting only those which are so defective as to be unintelligible, (10*, 34*, 36*.) The home returns are cast up on the first Friday and the military returns on the third Friday after the election. (6*, 8*, 9*, 10*, 33*.) Each of these county board returns is required to contain a fair statement of all the votes given for the county for every candidate for Congress, to be signed (not sealed) by all the judges present, and attested by the clerks, to be taken in charge by one of the judges and by him produced at the meeting of the district board; and, as we have already seen, the district board is required to cast up the several county returns and send its return of the result to the secretary of the Commonwealth.

A failure by a county board to count an intelligible home precinct return is

as fatal to the validity of the return of such county board, as a failure by a district board to count one of the county returns is fatal to the validity of the return of such district board; and a failure by a county board to count an intelligible military election return is precisely as fatal to the validity of the return of such county board as is a failure to count one of the home precinct returns, (10*, 34*, 36*.)

In each of the five counties of the district all of the home and military precinct returns were duly forwarded—the former by the hands of precinct judges, and the latter by mail—to the office of the prothonotary. But in one case, that of company B, 21st regiment volunteer cavalry, the *original* return was before the Adams county board, and not the certified copy provided for by the law, (30* and paper 12.) The law, however, while it does require the prothonotary to deliver certified copies of the returns of military votes to the county board, does not restrict the board to the use of such copies to the exclusion of the originals, (34*.) Eight such returns were rejected by the Adams board, and two by the Bedford board. (Papers 12, 18.)

All of these home and military precinct returns (with a single possible exception, which was disregarded by the parties) were duly counted by the proper county boards in three of the five counties, viz: Franklin, Fulton, and Somerset; but in Adams and Bedford a majority of each county board refused to count certain military returns. In Bedford county the prothonotary refused to certify to the county board two of the military returns, and set forth his reasons for such refusal, in the instrument by which he certified the other copies. The minority in each case opposed the action of the majority. In Adams the majority of the judges signed a paper purporting to be a return of the home and military vote, but in fact not embracing the rejected military returns of that county. (Paper 11.) At the same time and place they signed, as return judges, a paper setting forth their reasons for not counting the several rejected returns. (Paper 12.) On the other hand, the minority of the same board signed a paper purporting to be a return of the home and military vote, and in fact including the military returns which were rejected by the majority. (Paper 13.) And, at the same time and place, they signed a paper containing a protest against the action of the majority and setting forth their reasons for not concurring therein. (Paper 14.)

In Bedford county all the judges of the county board on the first Friday after the election signed a paper purporting to be a return of the home vote. (Paper 8.) But after the computation of the military vote, the majority signed a paper purporting to be a return of the military vote for that county, but, in fact, excluding the two rejected returns. (Paper 9.) The minority, on the other hand, refused to sign that paper, but did sign a paper purporting to be a return of the military vote for the county, and, in fact, including the two rejected returns. (Paper 10.)

The returns of the majorities of the Adams and Bedford county boards were produced by judges belonging to and designated by the majorities of such boards, at the meeting of that district board from which emanated the return in favor of Mr. Coffroth. (Paper 4.) The returns of the minorities of these two county boards were borne by judges belonging to and designated by the minorities to that district board from which emanated the return in favor of Mr. Koontz. (Paper 2.)

If it was the intention of the legislature of Pennsylvania to augment the difficulties which must always attend the exercise of the elective franchise by soldiers in the field, by hampering them with more stringent and minute formalities than encumber the elective franchise within the State, the intention was certainly not well expressed in the military election act of 1864, which contains the following sweeping clause, not found in any other general law of that State: "No mere informality in the manner of carrying out or executing any of the provisions

this act shall invalidate any election held under the same, or authorize the return thereof to be rejected or set aside." (Sec. 26, law 1864—32.*)

By the law applicable to the home elections, a clear distinction is made between the return of the precinct judges, strictly so called, and the poll-book, tally-list, and certificates of oaths. One duplicate of the poll-book, tally-list, and certificates of oaths is sealed up in one or more of the ballot-boxes, and deposited with the nearest justice, "to answer the call of any persons or tribunal authorized to try the merits of such election." (Purdon's Dig., p. 287, sec. 55.) The other duplicate is sent under seal to the office of the prothonotary of the county. But an entirely different disposition is made of the return. That, and that only, goes to the county board. To that only do the judges of the county board look to ascertain the vote of the precinct. The errors, defects, and informalities of the poll-books, tally-lists, and certificates of oaths, are immaterial. If the returns are not so defective as to be unintelligible, the judges must count them, and leave to other tribunals the rectification of whatever wrongs may ensue. The county board *must* meet on the first Friday after the election, (6*) and *may* meet on the morning of that day. But the law does not compel the deposit of the poll-books, tally-lists, and certificates, before the evening of that day, (4*.) Hence, during the whole of the day on which the board meets they may be inaccessible, even though the judges should desire to inspect them.

In the military elections the same distinction exists between the return and the poll-book, tally-list, and certificate. The military return is, in substance, the same as the home return, (6*, 26*.) It is true that the military return is sent to the office of the prothonotary, where also the tickets, poll-book, tally-list, and certificates of oaths are sent, all being written in the same book or series of papers. But the reason of this is to be found in the obvious propriety of sending the return to some known public office to await the call of the county board. And no office can be more appropriate than that of the prothonotary. This circumstance, therefore, does not affect the legal character of the return. The law requires the prothonotary to certify to the board copies of the returns, not of the poll-books or other papers. (30*.) If the originals are used, it is only at the original returns that the judges are required to look.

But all of the ten rejected returns of Adams and Bedford counties, (using the word in its restricted and proper sense,) except those of company B, 21st regiment, Adams county, and company H, 208th regiment, Bedford county, are free from such defects as would render them unintelligible or incapable of computation; those of companies B and G, 138th regiment, and company I, 210th regiment, are absolutely perfect; and those of the three hospitals and of Barracks No. 1 closely approximate to perfection.

Now, the home electors have no such sweeping provision in aid of informalities as has been enacted for the soldiers. If, then, the county board cannot inquire into the regularity of the poll-books, tally-lists, or certificates of oaths of home electors, who come with returns which are not so defective as to be unintelligible or incapable of computation, why should they inquire into the regularity of these papers when soldiers come with intelligible returns?

If, notwithstanding the evident intention of the legislature to lighten the burden of formalities, always so oppressive to electors in the field, and to intrust to courts and other tribunals the remedy of inevitable evils, we are to scrutinize the soldier's poll-books, tally-lists, and certificates of oaths, as well as his returns, while the home elector is merely required to bring intelligible returns, still the soldier will bear even this scrutiny in the present case. For such a scrutiny shows the illegality of the rejection of eight of these returns.

1. The return of company K, 184th regiment, was rejected "because it embraced one voter from Franklin county." (Papers 30 and 12.)

For want of proper proof that this vote was not counted also in Franklin county, which is within this congressional district, Mr. Koontz, who insists on

his return, should lose one vote, and the residue should be counted : for Mr. Coffroth, twenty-one ; and for Mr. Koontz, thirty-eight.

2. The return of company C, 202d regiment, was rejected for the alleged reason that the election was held and the return made by only one judge. (Papers 12, 22.)

All three of the judges signed this return, which is not only intelligible, but almost perfect in form. And yet the accompanying poll-book and certificates do not show that more than one judge was sworn. We have therefore concluded, not without grave doubts, to reject this return, which would, if received, give Mr. Coffroth fifteen and Mr. Koontz twenty-seven votes.

3. The three returns for the Mower, Cuyler, and McClellan hospitals (papers 12, 23, 24, 25) were rejected because the certificates of the oaths of the election officers were wanting. This was no lawful ground for their rejection, for it appears from the whole papers that the judges and clerks were actually sworn, and the returns, though defective in form, are perfectly intelligible, and clearly within the provisions of the statute applicable to mere informalities. They give Mr. Koontz five votes, Mr. Coffroth none.

4. The return of companies B and G, 138th regiment, (papers 12, 26,) was rejected because two companies voted at one poll, before one set of election officers.

It does not, however, appear from the return, or from any other proof before the committee, that two companies voted at one poll or before one set of election officers. It does appear that electors of two companies so voted. But under the act of 1864 (13* and 14*) electors of two hundred companies may so vote. In order to invalidate this return, it must be shown that these thirty-three voters constituted two organized companies, and not detachments absent from their companies. This does not appear. On the contrary, the language of the return and of the poll-book is precisely such as would be proper if they voted as detachments. (20*, 24*, 25*, 26*, 27*.) There could be no excuse for such rigor towards electors in the military service as would be involved in the rejection of this return, even if the liberal statutory provisions respecting defects and informalities were entirely wanting. This return gives Mr. Coffroth one and Mr. Koontz thirty-two votes.

5. The return of company I, 210th regiment, (papers 12, 27,) was rejected because the certificates of the oaths of the election officers were wanting.

The poll-book recites that these officers were sworn. Their oath is annexed to the poll-book, duly signed by all the officers. The clerk's certificate is there. The return is substantially correct and duly signed. These papers clearly show that the election officers were duly sworn, and, in our judgment, are undoubtedly on the safe side of the line which separates essential defects from mere informalities.

6. The return of company B, 21st regiment cavalry, (paper) was rejected for three alleged reasons :

(1.) No copy of the return was certified by the prothonotary to the return judges.

It has already been shown that the judges might use the original which they had as well as a copy. And if there could possibly be any doubt as to their right to do that, there can be no doubt as to our right to use the certified copy which is before us.

(2.) It is alleged that the election of officers appear to have been affirmed by Captain James Mickley, who was not an officer of the election.

This, however, does not appear from the return, or from any of the papers connected with it, or from any other proofs before the committee.

(3.) The number of votes cast for representative, is alleged to have been greater than the number of Adams county electors present.

The poll-book does show that two votes were cast by electors of Franklin

county, which is in the same congressional district. There being no proof that these two votes were not also counted in Franklin, they should be deducted from the vote of Mr. Koontz, and the rest counted—for Mr. Coffroth four, and for Mr. Koontz thirty-four.

From the copy of military returns (paper 18) certified to the Bedford county board by the prothonotary, it appears that the returns rejected by the majority, were those of company H, 208th regiment, (paper 19,) and Barracks No. 1, Washington (paper 20) that the board had actual notice of the presence of the originals, in the prothonotary's office, and of his reasons for refusing to certify them.

The return of company H, 208th regiment, (paper 19,) was rejected for the alleged reason that the poll-book gives the names of only thirty-six Bedford county electors, while fifty-two votes are returned for members of Congress. This is true. But sixteen votes are shown, by the poll-book, to have been cast by electors of Franklin and Fulton counties, of the same congressional district. They were sent to *one* county, instead of being distributed. Inasmuch as it has not been shown before the committee that these sixteen votes were not also counted in the proper counties, they should be deducted from the vote of Mr. Koontz, who insists upon the return, and the rest counted—for Mr. Coffroth eighteen, and for Mr. Koontz eighteen.

The return of Barracks No. 1 was rejected for the alleged reason that the poll-book contains the names of only forty-eight electors, and yet eighty-seven votes were cast for representative in Congress. Passing from the *return*, which exhibits no such discrepancy, and is very far from being so defective as to be unintelligible, to the *poll-books*, which present the apparent contradiction, we find in the proofs before us a satisfactory explanation. By the law (20*) the election officers are required to keep, at each of the polls, as many poll-books as there are counties represented by electors. At the polls for Barracks No. 1 there were two for the sixteenth congressional district, which were produced before the committee. (Papers 20, 21, 31.) There may have been others. Of these two, one was the return in question, and the other was for Fulton county. (Paper 31.) The latter return, coupled with paper 29, shows that thirty-seven Fulton votes were cast at that election, and yet none were counted in that county for representative in Congress. It appears that the votes were in this case, as in the last, sent through the mistake of the officers to *one* county, instead of being distributed. This will not, in our judgment, warrant us in rejecting any of these votes except the two which are unexplained, and should be deducted from the vote of Mr. Koontz. Mr. Coffroth is entitled to twenty-nine, and Mr. Koontz to fifty-six.

The majority and minority returns from the Adams county board, produced in the respective district boards, were, therefore, both invalid. That of the majority was invalid for the same reason for which the return of the Coffroth district board was invalid. It did not embrace all the valid military precinct returns. It was claimed that it was also invalid because it was not signed by all the precinct judges present at the meeting of the board; that while it might not have been invalidated by the mere *absence* of a minority, yet the non-concurrence, and *a fortiori* the actual opposition of the minority *being present*, did destroy its validity. The considerations in favor of this position are not without weight. The phraseology of the law is peculiar and peremptory. "The clerks shall thereupon, in the presence of the judges, make out returns in the manner hereinafter directed, which shall be signed by *all the judges present*, and attested by said clerks," (9*.) And if it would be a hardship to suffer a minority, by its opposition, to destroy a return, and so temporarily deprive a duly elected member of his seat, it would certainly be no less a hardship to suffer a majority, by a false return, to give the seat, despite the protest of the minority, to a claimant who was not in fact elected. Indeed, the injury in the

former case would not be so great as in the latter. In the former case the rightful claimant would be subjected to a temporary delay in assuming his office, and the country to a temporary loss of his services; whereas, in the latter, an intruder, with no rights, would be thrust by individuals into the national legislature at its organization, to remain until evicted after a contest. The right of a district to be always represented is nowise vindicated, but rather assailed, by the admission of an interloper to its place on this floor. The hazard of empowering a dishonest minority of county return judges to temporarily deprive a rightful claimant of his seat, and the country of his services, is as nothing compared with the hazard of empowering a dishonest majority to send hither men not chosen by the people to legislate for the country until driven from the House. It is true that this power must always reside somewhere, in governors or other officers, authorized to furnish credentials to representatives in Congress. But only urgent reasons would warrant the extension of this power from responsible public officers to private individuals. The attorney general of Pennsylvania, in his opinion, (paper 32,) which was accepted by the claimants as a correct statement of facts only, seems to have considered the provision of section 60 of the general election law of 1839, requiring the return to be signed by all the judges present, inapplicable when the district is composed of two or more counties, for which case additional provisions are made in section 63. But we are of a different opinion, and, if it were necessary to decide this question, should find great difficulty in upholding the return of the majority against the objection that the minority opposed it.

The return of the minority of the Adams county board, although it did embrace all the precinct returns, was invalid because it was the return of a minority, if not for the reason that it was not signed by all the judges present.

For the same reasons the returns of the soldiers' vote, by the majority and minority of the Bedford county board, were both invalid.

Neither these returns, nor the judges who bore them, had any place in either of the district boards.

In Franklin county, although the return of the county board was signed by all the judges, there was a difficulty in the selection of a judge to produce the return at the district board. The law provides that one of the county judges shall take charge of the return, and produce it at the meeting of the district board, (38*.) The mode of his selection is not indicated. Any one of the county judges who produces a regular valid return has, *prima facie*, a right to a seat in the district board, *without* credentials showing his appointment. Nevertheless, the judges of the county board undoubtedly have the right, by a majority vote, to select their representative in the district board, and to reconsider their choice and make another, at any time before the meeting of the board. Mr. Laker, who was chosen by a majority at the second meeting of the Franklin county board, and attended the Coffroth district board, was the lawful district judge for that county; and Mr. Wilhelm, who was unanimously chosen at the first meeting of the county board, and attended the Koontz district board, was not. And yet he was actually a member of the county board, and if he had produced the return, at a meeting of the district board, would have been *prima facie* entitled to act as district judge, (38*.)

Mr. Wills was the lawful district judge for Somerset county, and attended the Koontz board only.

Mr. Winter was the regularly chosen district judge for Fulton county, and on the proper day attended first the Koontz board, and afterwards the Coffroth board. If the first board had contained a majority of the lawful judges, including himself, his functions would have ended there, and his attendance at the second would have been unlawful. But there was only one other lawful judge present at the Koontz board, viz: Mr. Wills, of Somerset. And when Mr. Winter reached the Coffroth board, he found only one other lawful member

there, viz: Mr. Laker, of Franklin, who had been elected by a mere majority in place of Mr. Wilhelm, whose election was lawful and unanimous.

In our judgment, then, the certificate and other papers, which were referred to the committee, and were competent as evidence, show the following to have been the whole number of votes legally returned for the respective claimants:

UNDISPUTED.		
	Coffroth.	Koontz.
Franklin county, total	3, 457	3, 508
Fulton county, total	807	535
Somerset county, total	1, 592	2, 512
Adams county, part	2, 707	2, 366
Bedford county, home	2, 410	1, 740
Bedford county, part soldiers.....	94	318
DISPUTED.		
Adams county—Company K, 184th regiment.....	21	38
Mower hospital	..	1
Cuyler hospital.....	..	1
McClellan hospital.....	..	3
Companies B and G, 138th regiment....	1	32
Company I, 210th regiment.....	9	19
Company B, 21st cavalry.....	4	34
Bedford county—Company H, 208th regiment	18	18
Barracks No. 1.....	29	56
	<u>11, 149</u>	<u>11, 181</u>
Majority for Mr. Koontz.....		32

If the majorities of the county boards of Adams and Bedford had counted as they should have done, all the returns which, irrespective of the accompanying, poll-books, tally-lists, and certificates of oaths, were free from defects sufficient to render them unintelligible or incapable of computation, the following would have been the result in the district canvass:

UNDISPUTED.		
	Coffroth.	Koontz.
Franklin county, total	3, 457	3, 508
Fulton county, total	807	535
Somerset county, total	1, 592	2, 512
Adams county, part.....	2, 707	2, 366
Bedford county, home.....	2, 410	1, 740
Bedford county, soldiers' part.....	94	318
DISPUTED.		
Adams county—Company K, 184th regiment.....	21	38
Company C, 202d regiment.....	15	27
Mower hospital.....	..	1
Cuyler hospital.....	..	1
McClellan hospital	..	3
Companies B and G, 138th regiment....	1	32
Company I, 210th regiment.....	9	19
Bedford county—Barracks No. 1.....	29	56
	<u>11, 142</u>	<u>11, 156</u>
Majority for Mr. Koontz.....		14

It remains to consider two positions which were taken on the argument before the committee :

1. It was urged that inasmuch as the vote of Somerset would not affect the result, the return of the Coffroth district board ought to be held conclusive by this committee as to the four other counties for which it purported to be a return; that otherwise Mr. Koontz would be permitted to profit by the wrong of his own partisan.

But we are unable to adopt this view, for the following reasons :

1. The governor, if he had not gone behind the returns of the rival district boards to ascertain by testimony who were the real district judges, (paper 32,) would have been compelled either to do nothing or to proclaim Mr. Koontz elected. On its face his return was perfect. Every judge who signed it had been a county return judge, and if he appeared in a district board with a county return, had a *prima facie* right to be there, which could only be defeated by showing that some other judge had in fact been selected by the county board to represent it in the district board. The Coffroth return was, on its face, worthless as a return upon which to base the governor's proclamation. The law requires the governor "to declare by proclamation the names of the persons so returned as elected." It by no means permits him to base his proclamation in part on the return and in part on evidence obtained *aliunde*. For the same reasons we must, if we do not go behind the return to inquire who were the lawful district judges, give the seat to Mr. Koontz, on his return alone.

2. The Coffroth return having, therefore, no *legal* character either before the governor or the committee, whatever regard we may give it will be a mere gratuity. It would certainly be a novelty if such an instrument should be conclusive. To withhold from it such conclusive character can be no real hardship to Mr. Coffroth, if he was not in fact elected. It cannot be a hardship to a claimant, who has neither a technical nor a substantial claim, to decline arbitrarily to provide him with a technical one, and hold it conclusive. On the contrary, to do so would be to wrong his competitor, if that competitor's claim, although not technically perfect, rested on a basis of real merit. If Mr. Coffroth had in fact a majority of the lawfully returned votes, it might well be called a hardship to suffer a partisan of Mr. Koontz, by a raid upon the district board, to rob him of his seat, but it cannot be said that this ought, of *itself*, to give the seat to Mr. Coffroth, if he did not in fact receive a majority of the votes, and had no chance of success, except through a previous raid of his own partisans on the soldiers' returns.

3. Looking behind the return of the district board, we find, as the attorney general did, that the district judges of Adams and Bedford counties were selected by majorities of their respective county boards; and we also find, what the attorney general had no occasion to inquire into, that the returns borne by those judges were nullities, and that, therefore, neither the returns nor their bearers had any place in the board.

II. It was also insisted before the committee that, if we should go behind the return of the district board, we ought to stop at the county board returns as conclusive, including the majority returns of Adams and Bedford counties. We cannot assent to this proposition. A scrutiny of the law will show that when two or more counties are embraced in one congressional district, as in the case before us, the county returns differ, in material points, both from the soldiers' elementary returns and from the district return. The law provides official depositories of the returns of the military election judges, and of the district board, viz: the offices of the secretary of the Commonwealth and of the prothonotary of the county. But for the return of a county board, when two or more counties are embraced in one district, no official depository is provided. It has but one office, viz: to transmit to the district board in an aggregate form the official declarations, made by the precinct judges, of the result of the elections

by them held, and when that office is performed its mission is so completely ended, that the law provides no place where it may be afterwards preserved. Both the return of the district board and the soldiers' elementary returns are preserved in public offices, and coming from official depositories duly certified, are, of themselves, lawful evidence before us. But the return of the county board, as an official paper, has no existence after the board has met and acted, and can come before us in no legal form of proof, except by the admission of the parties, although it might also, in a regular contest, be received as part of a deposition. The Adams and Bedford returns are before the committee by admission of the parties, but that admission is mutual, and embraces the papers of both or of neither. It will be a strange proceeding if Mr. Coffroth, after getting his majority returns before the committee by such conditional assent of his competitor, shall be permitted to turn round and repudiate the conditions, and convert his papers, which are here only by suffrance, into conclusive returns. Mr. Koontz could of course, with no greater injustice, make the same preposterous demand.

But, in addition to this, the majority return of Adams county is confronted by a paper of equal authority before us, signed by the same judges, at the same time and place, which must be taken as a part of the instrument itself. From the two papers it appears that certain votes were not counted, for reasons which the precinct returns show to have been unlawful, and the return is a nullity. It is also confronted by the minority return, which shows that the majority return was made in the face of the actual opposition of the minority, and is, therefore, of at least doubtful validity.

In Bedford county the majority return of the soldiers' vote is in like manner confronted by the minority report, by a duly authenticated transcript of the certified copies of military precinct returns furnished by the prothonotary to the county board, showing the rejection of two returns, and the reasons therefor; and by the military returns, which show the rejection to have been unlawful.

We offer the following resolutions:

1. *Resolved*, That William H. Koontz has the *prima facie* right to a seat in this house, as a representative of the sixteenth congressional district of the State of Pennsylvania.

2. *Resolved*, That Alexander H. Coffroth, desiring to contest the right of William H. Koontz to a seat as representative of the sixteenth congressional district, be required to serve upon the said Koontz, within fifteen days after the adoption of this resolution, a particular statement of the grounds of said contest; and that the said Koontz be required to serve upon the said Coffroth his answer thereto within fifteen days thereafter; and that both parties be allowed sixty days, next after the service of said answer, to take testimony in support of their several allegations and denials; notices of proposed examinations of witnesses to be given at least five days before such examinations; no such examination to be commenced at one place before the expiration of five days from the conclusion of the last examination at another place; such examinations to be regulated in all other respects by the provisions of the act of February 19, 1851.

HALBERT E. PAINE.
J. W. McCLURG.
S. SHELLABARGER.
G. W. SCOFIELD.

Statement of the statutory provisions applicable to this case.

(1*.) Two inspectors and one judge of the general election are annually chosen in each ward, district, and township, at the time and place of holding the election of constable therein; and, as a safeguard against evils which might

result if this board were composed exclusively of members of one political party, it is provided that at such election each qualified citizen shall vote for one judge and for only one inspector; that the judge and the two inspectors having the most votes shall be elected; and that each inspector shall, on the morning of the day of the general election, appoint one clerk.

(2*.) By the judge, electors, and clerks, so elected and appointed, the election of representatives in Congress is held and conducted on the second Tuesday of October, which is the day of the general election.

(3*.) The inspectors, or, if they disagree, the judge, shall have power to "decide upon the qualifications of any person claiming to vote." And this power is given to no other tribunal except those authorized to hear contested elections. (Purd. Dig., 285, 38.)

(4*.) At the close of the election the poll-book, tally-lists, and certificates of the oaths of judges, inspectors, and clerks, are sealed, and, within three days, filed in the office of the prothonotary of the county; and duplicates of the poll-book, tally-lists, and certificates, are deposited with the nearest justice of the peace. (Ib. 287, 55.)

(5*.) At the close of the election the judges and inspectors also sign and seal a certificate setting forth the number of votes given for each candidate.

(6*.) On the third day after the election the judge produces this certificate at a meeting of the judges from all the precincts of the county, held at the county court-house. (Ib. 287, 57.)

(7*.) "The judges of the several election districts in each county, being so met," one of their number is made president of the board, and two electors of the county, who may or may not be members of the board, are selected and sworn as clerks.

(8*.) It is then "the duty of the several return judges to deliver the certificates of election, in their respective districts, to the president of said board, who shall cause the clerks, in the presence of said board, to add together the number of votes which shall appear by said certificates to have been given for any person or persons in respect to each office or station."

(9*.) "The clerks shall thereupon, in the presence of the judges, make out returns in the manner hereinafter directed, which shall be signed by all the judges present, and attested by said clerks;" (Sec. 60.)

(10*.) "And it shall not be lawful for said judges or clerks, in casting up the votes which shall appear to have been given, as shown by the certificates, to omit or reject any part thereof, except where, in the opinion of said judges, such certificate is so defective as to prevent the same from being understood and computed in adding together the number of votes;" in which case a certified copy of such paper shall be attached to the return, and the original deposited in the prothonotary's office.

(11*.) Having "cast up" the home vote, the county board adjourns, to meet at the same place on the third Friday after the election "for the purpose of counting the soldiers' vote."

The act to regulate elections by soldiers in actual military service contains the following provisions:

(12*.) "A poll shall be opened in each company, composed in whole or in part of Pennsylvania soldiers, at the quarters of the captain or other officer thereof; and all electors belonging to such company, who shall be within one mile of such quarters on the day of election, and not prevented, by orders of their commanders or proximity of the enemy, from returning to their company quarters, shall vote at such poll and at no other place. (13*.) Officers, other than those of a company, and other voters detached and absent from their companies, or in any military or naval hospital, or in any vessel or navy yard, may vote at such other polls as may be most convenient for them; (14*.) and when there shall be ten or more voters at one place, who shall be unable to attend any company

poll or their proper place of election as aforesaid, the electors present may open a poll at such place as they may select, and certify, in the poll-book, which shall be a record of the proceedings at said election, substantially in the manner and form as hereinafter directed." (Sec. 2.)

(15*.) "Before opening the poll on the day of election, the electors present at each of the places aforesaid shall elect *viva voce* three persons, present at the time and having the qualifications of electors, for the judges of said election; (16*) and the judges so elected shall then appoint two of the persons present, who shall be qualified, to act as clerks of said election; (17*) and the judges shall prepare boxes or other suitable receptacles for the ballots." (Sec. 4.)

(18*.) "Before any votes shall be received, said judges and clerks shall each take an oath or affirmation that he will perform the duties of judge or clerk (as the case may be) of said election according to law and to the best of his abilities, and that he will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same; which oath or affirmation any of the said judges or clerks, so elected or appointed, may administer to each other; and the same shall be in writing, or partly written and partly printed, and signed by said judges and clerks and certified to by the party administering the same, and attached to or entered upon the poll-book, and there signed and certified as aforesaid." (Sec. 5.)

(19*.) The judges, or a majority of them, decide upon the qualifications of voters, and the power to do so belongs to no other persons or tribunals, except those authorized to try contested elections. (Sec. 6.)

(20*.) "Separate poll-books shall be kept, and separate returns made, for the voters of each city or county. The poll-books shall name the company and regiment, and the place, post or hospital in which such election is held. The county and township, city, borough, ward, precinct, or election district of each voter shall be indorsed opposite his name on the poll-books. (21*.) Each clerk shall keep one of said poll-books, so that there may be a double list of voters." (Sec. 7.)

(22*.) "At the close of the polls the number of voters shall be counted and set down at the foot of the list of voters, and certified and signed by the judges and attested by the clerks." (Sec. 10.)

(23*.) As a check in counting, each clerk shall keep a tally-list for each county from which votes shall have been received, which tally-list shall constitute a part of the poll-book. (Sec. 13.)

(24*.) A form of the poll-book is given in the act, following literally the provisions of section 7.

(25*.) A form of the oath, and of the certificates of those by whom it is administered, is given, according with the provisions of section 5.

(26*.) "A return in writing shall be made in each poll-book, setting forth in words, at length, the whole number of ballots cast for each officer (except ballots rejected,) the name of each person voted for, and the number of votes given to each person, for each different office; which return shall be certified as correct, signed by the judges and attested by the clerks." (Sec. 16.)

(27*.) A form of the return is then given in literal compliance with the foregoing provisions of section 16.

(28*.) One poll-book, tally-list, and return, for each county, is sent with the tickets, by mail or express, or by a commissioner sent from the State, as soon as possible to the prothonotary of that county. The other is sent by mail or express, or by a commissioner, to the secretary of the Commonwealth, (29*) who delivers to the proper prothonotary, on demand, "a certified copy of the return of votes so transmitted."

(30*.) "It shall be the duty of the prothonotary of the county, to whom such returns shall be made, to deliver to the return judges of the same county a copy, certified under his hand and seal, of the return of votes so transmitted to him

by the judges of the election as aforesaid, or, as officially certified by the secretary of the Commonwealth, as aforesaid, to said prothonotary." (Sec. 18.)

(31*.) The act authorizes less than ten electors to vote by proxy, under certain circumstances.

(32*.) "*No mere informality in the manner of carrying out or executing any of the provisions of this act shall invalidate any election held under the same, or authorize the return thereof to be set aside.*" (Sec. 27.)

(33*.) This act requires the county board of return judges to meet, according to adjournment, (as already stated,) on the third Friday after the election, for the purpose of counting the soldiers' vote.

(34*.) "The return judges, so met, shall include in their enumeration, the votes so returned, and thereupon shall proceed, in all respects, in the like manner as is provided by law in cases when all the votes shall have been given at the usual place of election: *Provided*, (35*) That the several courts of this Commonwealth shall have the same power and authority to investigate and determine all questions of fraud or illegality in relation to the voting of the soldiers as are now vested in said courts with regard to questions of fraud and illegality arising from the voting of persons not in military service under the present laws relating thereto." (Sec. 20.)

(36*.) "And all of the provisions of the general election laws of this State, so far as applicable, and not inconsistent with the provisions of this act, nor supplied thereby, shall apply to all elections held under this act." (Sec. 28.)

(37*.) When, as in the case before us, two or more counties compose a congressional district, "the clerks shall make out a fair statement of all the votes" given in the county for the several candidates, "which shall be signed by said judges and attested by the clerks, (38*) and one of the said judges shall take charge of such certificate, and shall produce the same at a meeting of one judge from each county," at a place within the district designated by law, on the fourth Friday after the election.

(39*.) The district board so constituted "shall cast up the several county returns, and make duplicate returns of all the votes given for such office in said district, and of the name of the person or persons elected." (40*.) One of these duplicates is deposited in the office of the prothonotary of the county, where the meeting of the district board is held, and the other transmitted by mail to the secretary of the Commonwealth.

(41*.) "It shall also be the duty of the return judges, in every case, to transmit to each of the persons elected to serve in Congress" a "certificate of his election within five days after the day of making up such return." (Purd. Dig., 289, 65.)

(42*.) "It shall be the duty of the governor, on the receipt of the returns of the election of members of the House of Representatives of the United States, as aforesaid, by the secretary of the Commonwealth, to declare, by proclamation, the names of the persons so returned as elected in the respective districts; (43*) and he shall also, as soon as conveniently may be thereafter, transmit the returns so made to the House of Representatives of the United States." (Purd. Dig., 293, 113.)

No. 1.

PENNSYLVANIA, ss:

In the name and by the authority of the Commonwealth of Pennsylvania, Andrew G. Curtin, governor of the said Commonwealth:

A PROCLAMATION.

Whereas, in and by an act of the general assembly of this Commonwealth, passed the second day of July, one thousand eight hundred and thirty-nine, entitled "An act relating to the elections of this Commonwealth, it is made the

duty of the governor, on the receipt of the returns of the election of the members of the House of Representatives of the United States by the secretary of the Commonwealth, to declare by proclamation the names of the persons returned as elected in their respective districts ;

And whereas the returns of the general election held on Tuesday, the eleventh day of October last, in and for the several districts for members to serve in the House of Representatives of the Congress of the United States, for the term of two years from and after the fourth day of March next, have been received in the office of the secretary of the Commonwealth, agreeably to the provisions of the above recited act, whereby it appears that in the first district, composed of the second, third, fourth, fifth, sixth, and eleventh wards, in the city of Philadelphia, Samuel J. Randall has been duly elected ; in the second district, composed of the first, seventh, eighth, ninth, and tenth wards, in the city of Philadelphia, Charles O'Neill has been duly elected ; in the third district, composed of the twelfth, thirteenth, sixteenth, seventeenth, eighteenth, and nineteenth wards, in the city of Philadelphia, Leonard Myers has been duly elected ; in the fourth district, composed of the fourteenth, fifteenth, twentieth, twenty-first, and twenty-fourth wards, in the city of Philadelphia, William D. Kelley has been duly elected ; in the fifth district, composed of the twenty-second, twenty-third, and twenty-fifth wards, in the city of Philadelphia and the county of Bucks, M. Russell Thayer has been duly elected ; in the sixth district, composed of the counties of Montgomery and Lehigh, B. Markley Boyer has been duly elected ; in the seventh district, composed of the counties of Chester and Delaware, John M. Broomall has been duly elected ; in the eighth district, composed of the county of Berks, Sydenham E. Ancona has been duly elected ; in the ninth district, composed of the county of Lancaster, Thaddeus Stevens has been duly elected ; in the tenth district, composed of the counties of Schuylkill and Lebanon, Myer Strouse has been duly elected ; in the eleventh district, composed of the counties of Northampton, Carbon, Monroe, Pike, and Wayne, Philip Johnson has been duly elected ; in the twelfth district, composed of the counties of Luzerne and Susquehanna, Charles Denison has been duly elected ; in the thirteenth district, composed of the counties of Bradford, Wyoming, Sullivan, Columbia, and Montour, Ulysses Mercur has been duly elected ; in the fourteenth district, composed of the counties of Northumberland, Union, Snyder, Juniata, and Dauphin, George F. Miller has been duly elected ; in the fifteenth district, composed of the counties of Cumberland, York, and Perry, Adam J. Glossbrenner has been duly elected. And I do further declare that no such returns of the election in the sixteenth congressional district have been sent to the secretary of the Commonwealth as would, under the act of assembly of 2d July, A. D. 1839, authorize me to proclaim the name of any person as having been returned as duly elected a member of the House of Representatives of the United States for that district. In the seventeenth district, composed of the counties of Cambria, Blair, Huntingdon, and Mifflin, Abraham A. Barker has been duly elected ; in the eighteenth district, composed of the counties of Centre, Clinton, Lycoming, Tioga, and Potter, Stephen F. Wilson has been duly elected ; in the nineteenth district, composed of the counties of Erie, Warren, McKean, Forest, Elk, Cameron, Jefferson, and Clearfield, Glenni W. Schofield has been duly elected ; in the twentieth district, composed of the counties of Crawford, Venango, Mercer, and Clarion, Chas. V. Culver has been duly elected ; in the twenty-first district, composed of the counties of Indiana, Westmoreland, and Fayette, John L. Dawson has been duly elected ; in the twenty-second district, composed of that part of Allegheny county south of the Ohio and Allegheny rivers, including Nevil island, J. K. Morehead has been duly elected ; in the twenty-third district, composed of that part of Allegheny county north of the Ohio and Allegheny rivers, and of the counties of Butler and Armstrong, Thomas Williams has been duly elected ; in the twenty-fourth district, composed of the counties

of Lawrence, Beaver, Washington, and Greene, George V. Lawrence has been duly elected :

Now, therefore, I, Andrew G. Curtin, governor as aforesaid, have issued this my proclamation, hereby publishing and declaring that Samuel J. Randall, Chas. O'Neill, Leonard Myers, Wm. D. Kelley, M. Russell Thayer, B. Markley Boyer, John M. Broomall, Sydenham E. Ancona, Thaddeus Stevens, Myer Strouse, Philip Johnson, Chas. Denison, Ulysses Mercur, Geo. F. Miller, Adam J. Glossbrenner, Abraham A. Barker, Stephen F. Wilson, Glenni W. Scofield, Chas. V. Culver, John L. Dawson, J. K. Morehead, Thos. Williams, and Geo. V. Lawrence, have been returned as duly elected in their several districts before mentioned, as representatives in the Congress of the United States, for the term of two years, to commence from and after the fourth day of March next.

Given under my hand and the great seal of the State, at Harrisburg, this twenty-sixth day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the Commonwealth the eighty-ninth.

By the governor.

ELI SLIFER,
Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
Harrisburg, Pa., December 31, 1864.

PENNSYLVANIA, ss :

I hereby certify that the within is a full, true, and correct copy of the original proclamation of the election of member of Congress, as the same remains on file and of record in this office.

Given under my hand and the great seal of the State, at Harrisburg, this thirty-first day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the Commonwealth the eighty-ninth.

[SEAL.]

ELI SLIFER,
Secretary of the Commonwealth.

No. 2.

Sixteenth congressional district returns.

We, the subscribers, being duly appointed return judges of the election held in the several counties composing the sixteenth congressional district of the Commonwealth of Pennsylvania, to wit. Adams, Bedford, Franklin, Fulton, and Somerset counties, of said Commonwealth, having met as required by law on the fourth instant, it being the fourth Friday after the general election of October eleven, A. D. one thousand eight hundred and sixty-four, having met together at the court-house in the borough of Chambersburg, on the fourth day of November, instant, and having carefully examined the returns of the said several counties, and added together the votes therein contained according to law, do certify that for Congress, in Adams county, William H. Koontz had in the several election districts in said county two thousand two hundred and thirty-three votes, (2,233.) By the return of votes of volunteers and electors in the military service of the United States, the said William H. Koontz had two hundred and ninety-two votes, (292;) making in all in said county two thousand five hundred and twenty-five votes, (2,525.) In said county Alexander H. Coffroth had in the several election districts in said county two thousand six hundred and forty-four votes, (2,644.) By the return of votes of electors in the military service of the United States the said Alexander H. Coffroth had one hundred and fifteen votes, (115;) making in all in said county two thousand seven hundred and fifty-nine votes, (2,759.)

In Bedford county William H. Koontz had in the several election districts in said county one thousand seven hundred and forty votes, (1,740.) By the return of votes of electors in the military service of the United States, the said William H. Koontz had four hundred and five votes, (405;) making in all in said county two thousand one hundred and forty-five votes, (2,145.) In said county Alexander H. Coffroth had in the several election districts of said county two thousand four hundred and ten votes, (2,410.) By the return of votes of electors in the military service of the United States the said Alexander H. Coffroth had one hundred and forty-one votes, (141;) making in all in said county two thousand five hundred and fifty-one votes, (2,551.)

In Fulton county William H. Koontz had in the several election districts in said county five hundred and thirteen votes, (513.) By the return of votes of electors in the military service of the United States, the said William H. Koontz had thirty-nine votes, (39;) making in all in said county five hundred and fifty-two votes, (552.) In said county Alexander H. Coffroth had in the several election districts in said county eight hundred and three votes, (803.) By the return of votes of electors in the military service of the United States, the said Alexander H. Coffroth had twelve votes, (12;) making in all in said county eight hundred and fifteen votes, (815.)

Franklin county, William H. Koontz had three thousand five hundred and eight votes, (3,508.) Alexander H. Coffroth had three thousand four hundred and fifty-seven votes, (3,457.)

Somerset county, William H. Koontz had two thousand five hundred and twelve votes, (2,512.) Alexander H. Coffroth had one thousand five hundred and ninety-two votes, (1,592.)

And we do declare that the said William H. Koontz, having received the greatest number of legal votes for the office of Congress from the said sixteenth congressional district of Pennsylvania, he is, and we do hereby declare the said William H. Koontz, duly elected to the Congress of the United States from the said sixteenth congressional district of the said Commonwealth of Pennsylvania.

Given under our hands and seals at Chambersburg, in the county of Franklin, this the fourth day of November, A. D. 1864.

ALLEN S. WILL, <i>President, Somerset Co.,</i>	[L. S.]
WILLIAM S. CART, <i>Adams Co.,</i>	[L. S.]
JOHN WILHELM, <i>Franklin Co.,</i>	[L. S.]
NATHAN WINTER, <i>Fulton Co.,</i>	[L. S.]
NICHOLAS PECK, <i>Bedford Co.,</i>	[L. S.]

Return Judges.

Attest :

W. S. EVERETT,
G. O. SEILHAMER,
Return Clerks.

No. 4.

Election return of the sixteenth congressional district of Pennsylvania, composed of the counties of Adams, Bedford, Franklin, Fulton, and Somerset.

The undersigned, a majority of the return judges elected by the several boards of the return judges of the above-named counties to meet, examine said returns, and count the votes of the several counties in said district, do hereby certify that, in pursuance of law, we met in the court-house in the borough of Chambersburg, on Friday, the 4th day of November, A. D. 1864, and proceeded to examine and count the votes cast for Congress in said district at a general

election held in the said counties on the second Tuesday of October, it being the 11th day of the month ; that Alexander H. Coffroth had, in the county of Adams, two thousand seven hundred and seven votes, (2,707 ;) in the county of Bedford, two thousand five hundred and four, (2,504 ;) in the county of Franklin, three thousand four hundred and fifty-seven, (3,457 ;) in the county of Fulton, eight hundred and seven, (807 ;) making a total of nine thousand four hundred and seventy-five, (9,475.)

For the same office William H. Koontz had votes in the county of Adams, two thousand three hundred and sixty-six, (2,366 ;) in the county of Bedford, two thousand and fifty-three, (2,053 ;) in the county of Franklin, three thousand five hundred and eight, (3,508 ;) in the county of Fulton, five hundred and thirty-five, (535 ;) making a total of eight thousand four hundred and sixty-two ; majority for Coffroth, 1,013.

Hon. Alexander H. Coffroth having received a majority of all the votes cast, as counted before the board, is declared duly and legally elected "a member of the House of Representatives of the United States," and a certificate of election has accordingly been forwarded to him.

The county of Somerset was not represented by a judge, or otherwise, at said meeting. Notice of the time and place of meeting of said board was given the return judge elected from Somerset, who was in the borough of Chambersburg on the day of meeting.

In testimony whereof we have hereunto set our hands and seals this 4th day of November, A. D. 1864.

W. FINDLAY MANN, [L. S.]

Judge from Bedford county.

JOHN H. LAKER, [L. S.]

Judge from Franklin county.

NATHAN WINTER, [L. S.]

Judge from Fulton county.

F. DIETZ, [L. S.]

Return Judges.

Attest :

JOHN R. ORR, *Clerk.*

No. 5.

Franklin county returns.

We, the subscribers, being appointed return judges of the election held in the several election districts in the county of Franklin on the 11th instant, it being the second Tuesday of October, A. D. 1864, having met together at the courthouse in the borough of Chambersburg, on the 28th day of October, instant, and having carefully examined the returns of the said several districts, and added together the votes therein contained, according to law, do certify that—

For president judge, Francis M. Kimmell had three thousand four hundred and seventy-seven votes, (3,477 ;) Alexander King had three thousand four hundred and thirty-one votes, (3,431.)

For Congress, Alexander H. Coffroth had three thousand four hundred and fifty-seven votes, (3,457 ;) William H. Koontz had three thousand five hundred and eight votes, (3,508.)

For assembly, J. McD. Sharpe had three thousand five hundred and eighty votes, (3,580 ;) William Mitchell had three thousand two hundred and ninety-eight votes, (3,298 ;) Alexander K. McClure had three thousand six hundred and thirty-two votes, (3,632 ;) Samuel Roath had three thousand three hundred and seventy-six votes, (3,376.)

For commissioner, John Armstrong had three thousand four hundred and seventy-eight votes, (3,478;) Hugh B. Davidson had three thousand four hundred and forty-two votes, (3,442.)

For director of the poor, David J. Skinner had three thousand four hundred and forty-six votes, (3,446;) John H. Criswell had three thousand four hundred and seventy-five votes, (3,475.)

For auditor, Montgomery Martin had three thousand four hundred and sixty-six votes, (3,466;) Morrow B. Skinner had three thousand four hundred and forty-one votes, (3,441.)

For coroner, Victor Miller had three thousand four hundred and fifty-nine votes, (3,459;) Hiram E. Wertz had three thousand four hundred and fifty-one votes, (3,451.)

Given under our hands and seals this 28th day of October, A. D. 1864.

DAVID HAEFLOCH,	[L. S.]
SAMUEL ENY,	[L. S.]
ROBERT PARKER,	[L. S.]
C. C. FOLTZ,	[L. S.]
A. S. BROWN,	[L. S.]
JOSEPH MONER,	[L. S.]
ROBERT C JOHNSTON,	[L. S.]
ISAAC MACKENSMITH,	[L. S.]
GEO. FETTERHOFF,	[L. S.]
JOHN WILHELM,	[L. S.]
JOHN MAXHIMER,	[L. S.]
WM. D. GUTHRIE,	[L. S.]
DAVID ZULLINGER,	[L. S.]
DANIEL STEWART,	[L. S.]
JOHN H. LAKER,	[L. S.]
GEORGE CROWN,	[L. S.]
N. R. HARVEY,	[L. S.]
C. C. FOLTZ,	[L. S.]
JOHN H. THOMAS,	[L. S.]
JACOB GLASS,	[L. S.]
GEORGE W. WINGLE,	[L. S.]
DANIEL STEWART,	[L. S.]
JAS. D. McDOWELL,	[L. S.]

Return Judges.

Attest:

JOHN R. ORR,
JAMES M. RENFREW,
Return Clerks.

No. 6.

We, the subscribers, being duly appointed return judges of the election held in the several districts in the county of Somerset on the 11th instant, it being the second Tuesday in October, A. D. 1864, having met together at the courthouse of the said county, and having carefully examined the returns of the several districts and added the votes therein contained, according to law, do certify that at the said election the following named person had the highest number of votes for the office of representative in the House of Representatives of the United States, to wit:

William H. Koontz had twenty-five hundred and twelve votes, (2,512;) Alexander H. Coffroth had fifteen hundred and ninety-two votes, (1,592.)

In testimony whereof we have hereunto set our hands and seals the 28th day of October, A. D. 1864.

M. D. MILLER.	[L. S.]
MICHAEL BRUBAKER.	[L. S.]
ISRAEL RHOADS.	[L. S.]
DAVID ROBINSON.	[L. S.]
JOSEPH SNYDER.	[L. S.]
SAMUEL HEFFLEY.	[L. S.]
HIRAM CRAMER.	[L. S.]
J. M. LAMBERT.	[L. S.]
E. N. NUNNMAN.	[L. S.]
JEFFERSON STUCK.	[L. S.]
JOHN LEESE.	[L. S.]
MICHAEL G. REASE.	[L. S.]
LEVI SHOCKEY.	[L. S.]
ADAM FICTLING.	[L. S.]
WM. F. BITTNER.	[L. S.]
W. G. MILLUR.	[L. S.]
A. B. HOCTSTELL.	[L. S.]
JACOB PETERSON.	[L. S.]
S. G. FLICKINGER.	[L. S.]
JOHN A. CLARK.	[L. S.]
ANANIAS P. MILLER.	[L. S.]
GABRIEL WALKER.	[L. S.]
JOHN GARDNER.	[L. S.]
WM. LYDIG.	[L. S.]
SAM'L WEIMER.	[L. S.]
ALLEN S. WILL.	[L. S.]
REUBEN KRETCHMAN.	[L. S.]

Attest:

E. K. HAINS,
ELIAS CUNNINGHAM,
Clerks.

No 7.

We, the undersigned, being duly appointed return judges of the general election held in the several districts in the county of Fulton on the 11th day of October, 1864, having met together at the court-house in the borough of McConnellsburg, and having carefully examined the returns of the several districts and added together the votes therein contained, according to law, do certify, that at said election the following named persons had the number of votes set opposite their names for the following offices, viz :

For Congress, Wm. H. Koontz had five hundred and thirteen (513) votes; A. H. Coffroth had eight hundred and three (803) votes.

The following is the army vote cast for the above named candidates, as handed to us and certified to by John A. Robinson, prothonotary of Fulton county, on the 28th day of October, A. D. 1864: William H. Koontz had twenty-two (22) votes; A. H. Coffroth had four (4) votes.

In witness whereof we have hereunto set our hands and seals the 14th day of October, 1864.

SAMUEL KERLIN.	[L. S.]
T. T. MELLITT.	[L. S.]
WM. T. KLINE.	[L. S.]
J. W. PORTER.	[L. S.]
HENRY KUTTS.	[L. S.]
BARTLEY MORGRET.	[L. S.]
LEWIS BERGSTRESSER.	[L. S.]
NATHAN WINTER.	[L. S.]
JONATHAN E. SHIVER.	[L. S.]
JAMES LYNCH.	[L. S.]
JOHN NELSON.	[L. S.]

Attest:

R. CAHILL,
GEO. McGOVERN,

Clerks.

No. 8.

We, the subscribers, being duly appointed the return judges of the election held in the several districts in the county of Bedford on the eleventh day of October, it being the second Tuesday, A. D. 1844, having met together at the court-house of the said county of Bedford, and having carefully examined the returns of the several districts, and added together the votes therein contained, according to law, do certify, that at the said election the following named persons had the highest number of votes as set opposite their names: For Congress, Alexander Coffroth had twenty-four hundred and ten votes, (2,410;) William H. Koontz had seventeen hundred and forty votes, (1,740.)

In testimony whereof we have hereunto set our hands and seals the fourteenth day of October, A. D. 1864.

W. FINDLAY MANN, <i>President.</i>	[L. S.]
W. P. MORGART.	[L. S.]
LEVEN WEIMER.	[L. S.]
THOMAS FISHER.	[L. S.]
JOSEPH B. ONVEBERGER.	[L. S.]
HENRY G. GEYER.	[L. S.]
NICHOLAS PECK.	[L. S.]
SAMUEL GAY.	[L. S.]
JOHN WHETSTONE	[L. S.]
ASA WILLIAMS.	[L. S.]
GEORGE W. FIGARD.	[L. S.]
J. S. BASSLER.	[L. S.]
W. P. ROCK.	[L. S.]
PETER IMLER.	[L. S.]
HENRY RALEY.	[L. S.]
SAMUEL LOWERY.	[L. S.]
JOHN C. CALHOUN.	[L. S.]
B. R. HENDERSON.	[L. S.]
SAMUEL BOLINGER.	[L. S.]
JOSEPH W. ELDER.	[L. S.]
THOMAS N. YOUNG.	[L. S.]
J. T. GEPHART.	[L. S.]

Attest:

J. H. HUTTEN,
V. VANDERSMITH,

Clerks.

No. 9.

We, the subscribers, being duly appointed the return judges of the election held in the several districts in the county of Bedford on the eleventh day of October, it being the second Tuesday, A. D. 1864, having met together at the court-house of said county of Bedford, and having carefully examined the returns of the several districts, and added together the votes therein contained, according to law, do certify, that at the said election the following named persons had the number of votes as set opposite their names for the office of Congress. William H. Koontz had (soldiers' votes) three hundred and eighteen, (318;) Alexander H. Coffroth had (soldiers' votes) ninety-four (94.)

In testimony whereof we have hereunto set our hands and seals the twenty-eighth day of October, A. D. 1864.

B. R. HENDERSON, <i>President.</i>	[L. S.]
HENRY RALEY.	[L. S.]
his	
SAMUEL × GAY.	[L. S.]
mark.	
SAMUEL BOLINGER.	[L. S.]
THOMAS N. YOUNG.	[L. S.]
THOMAS FISHER.	[L. S.]
W. P. MORGART.	[L. S.]
LEVEN WERMER.	[L. S.]
JOSEPH W. ELDER.	[L. S.]
SAMUEL LOWERY.	[L. S.]
J. T. GEPHART.	[L. S.]
JOHN WHETSTONE.	[L. S.]
W. Y. ROCK.	[L. S.]

Attest:

V. VANDERSMITH,
M. A. POINTS,
Clerks.

No. 10.

We, the subscribers, being duly appointed the return judges of the election held in the several districts in the county of Bedford on the eleventh day of October, it being the second Tuesday, A. D. 1864, having met together at the court-house of the said county of Bedford, and having carefully examined the returns of the several districts, and added together the votes therein contained, according to law, do certify, that at the said election the following named persons had the number of votes as set opposite their names for the office of Congress. William H. Koontz had (soldiers' votes) four hundred and five, (405;) Alexander Coffroth had (soldiers' votes) ninety-four (94.)

In testimony whereof we have hereunto set our hands and seals ——— day of October, A. D. 1864.

GEORGE W. FIGARD, <i>President.</i>	[L. S.]
PETER IMLER.	[L. S.]
J. C. CALHOUN.	[L. S.]
ASA WILLIAMS.	[L. S.]
NICHOLAS PECK.	[L. S.]
JACOB I. BASSLER.	[L. S.]

Attest:

V. VANDERSMITH, *Clerk.*

No. 11.

Certificate of return judges—State and District offices.

We, the subscribers, being duly appointed return judges of the election held in the several districts in the county of Adams on the eleventh instant, it being the second Tuesday in October, A. D. one thousand eight hundred and sixty-four, having met together at the court-house in the borough of Gettysburg, in the said county of Adams, and having carefully examined, the returns of the said several districts, and added together the votes therein contained, according to law, do certify, that at the said election the votes for member of the House of Representatives of the United States were as follows, to wit:

Alexander H. Coffroth had twenty-seven hundred and seven votes, (2,707;) William H. Koontz had twenty-three hundred and sixty-six votes, (2,366.)

And Frederick Diehl, esq., one of the said judges, is authorized to take charge of this certificate, and produce the same at a meeting of one judge from each county, composing the sixteenth congressional district, at the court-house in Chambersburg, on Friday next.

In testimony whereof, we have hereunto set our hands and seals this 28th day of October, A. D. 1864, having adjourned on the 14th instant to meet this day for the purpose of counting the soldiers vote, which we have included in above enumeration, according to law.

HENRY J. KUHN.	[L. S.]
ABRAHAM KRISE.	[L. S.]
FRANCIS BREAM.	[L. S.]
JOHN BAKER.	[L. S.]
WILLIAM DUTTERA.	[L. S.]
JOHN RUFF.	[L. S.]
PETER ORENDORFF.	[L. S.]
JOHN STRAUSBAUGH.	[L. S.]
GEORGE GINTER.	[L. S.]
HENRY WITMOR.	[L. S.]
JOHN BAKER.	[L. S.]
WILLIAM A. McSHERRY.	[L. S.]
F. DIEHL.	[L. S.]
DANIEL S. DIEHL.	[L. S.]

Attest:

H. G. WOLF,
WILLIAM McCLEAN,

Clerks.

ADAMS COUNTY, ss:

I, Jacob Bushey, prothonotary of Adams county, do hereby certify that the within is a true and correct copy of the return of the election delivered to me by the return judges of Adams county, taken from and compared with the original on file in my office.

Given under my hand and the seal of the court of common pleas of said county, at Gettysburg, Pennsylvania, this 9th day of March, A. D., 1865.

[SEAL.]

JACOB BUSHEY,

Prothonotary.

No. 12.

We, the subscribers, being duly appointed return judges of the election held in the several districts in the county of Adams, and among the soldiers of said county, on the eleventh instant, it being the second Tuesday in October, A. D.,

1864, having met together at the court-house in the borough of Gettysburg, in the said county of Adams, and having carefully examined the returns of the said several districts and of the soldiers' votes, do certify that we find the following returns illegal:

Company K, 184th regiment, because it embraced a voter from Franklin county

Company C, 202d regiment, because the election was held but by one judge, and return made but by the same one judge.

Mower United States general hospital, Cuyler United States army general hospital, McCiellan United States army general hospital, because certificates of oaths of election officers are wanted.

Companies B and G, 138th regiment, because two companies voted at one poll before one set of election officers.

Company I, 210th regiment, because certificate of oath is wanting.

Company B, 21st regiment volunteer cavalry, because no copy of this company election was certified to the return judges by the prothonotary; and further, because it appears from the original return that the officers of election were affirmed by James Mickley, captain, &c., who was not an officer of the election, and because there were more votes cast for Congress than there were electors of Adams county at that election.

In testimony whereof we have hereunto set our hands and seals this 28th day of October, A. D., 1864.

HENRY J. KUHN.	[L. S.]
JOHN STRAUSBAUGH.	[L. S.]
PETER ORENDORFF.	[L. S.]
FRANCIS BREAM.	[L. S.]
SAMUEL BLAKE.	[L. S.]
HENRY WITMOR.	[L. S.]
WILLIAM DUTTERA.	[L. S.]
WILLIAM A. McSHERRY.	[L. S.]
JOHN BAKER.	[L. S.]
JOHN RUFF.	[L. S.]
F. DIEHL.	[L. S.]
GEORGE GINTER.	[L. S.]
DANIEL S. DIEHL.	[L. S.]
ABRAHAM KRISE.	[L. S.]

Attest :

H. G. WOLF,
WILLIAM McCLEAN, } *Clerks.*

ADAMS COUNTY, ss :

I, Jacob Bushey, prothonotary of the court of common pleas of said county, hereby certify the foregoing to be a true and correct copy of certificate deposited in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 6th day of December, A. D. 1864.

[SEAL.]

JACOB BUSHEY, *Prothonotary,*

No. 13.

Certificate of return judges—Adams county.

The return judges of election held in the several districts in the county of Adams on the eleventh instant, (it being the second Tuesday in October, A. D. 1864,) having met together in the court-house in the borough of Gettysburg, in said county of Adams, on Friday, the 14th day of October, A. D. 1864, and having

carefully examined the returns of the said several districts, and added together the votes therein contained, found that in said districts the votes for Congress were as follows, to wit: Alexander H. Coffroth had two thousand six hundred and forty-four, (2,644;) William H. Koontz had two thousand two hundred and thirty-three votes, (2,233.) Whereupon the said judges adjourned, as required by law, to meet on Friday, the 28th day of October, A. D. 1864, (being the third Friday after said general election,) for the purpose of counting the soldiers' votes; and having so met on this 28th day of October, A. D. 1864, returns of votes cast by qualified voters from Adams county, in the military service of the United States, at elections held on the said second Tuesday of October, in various companies, hospitals, &c., were received and laid before said judges, showing the following votes to have been cast, viz:

	For William H. Koontz.	For Alexander H. Coffroth.
Mower United States general hospital, Philadelphia.....	1	0
Carver hospital, Washington, D. C.....	1	1
Camp Parole, Annapolis, Maryland.....	3	0
3d Pennsylvania artillery, Fort Monroe, Virginia.....	1	0
Cuyler hospital, Philadelphia.....	1	0
McClellan hospital, Philadelphia.....	3	0
1st Pennsylvania Home Brigade cavalry, Bolivar Heights..	16	0
12th Pennsylvania regiment.....	0	1
138th Pennsylvania infantry, companies B and G, Front Royal, Virginia.....	32	1
205th Pennsylvania infantry, C ...	0	1
3d Pennsylvania artillery, Fort Monroe, Virginia.....	6	0
Camp Fry, Washington, D. C.....	0	1
200th Pennsylvania regiment, Old Prince George's court- house.....	0	1
210th Pennsylvania regiment, colored camp, Squirrel Hill..	1	0
Mount Pleasant hospital, District of Columbia.....	0	1
Camp Martinsburg, Virginia.....	1	1
Cove Gap, Pennsylvania first battery, 100-days men.....	2	0
184th Pennsylvania infantry, company K.....	39	21
Camp Biddle, Carlisle, Pennsylvania.....	1	1
49th Pennsylvania infantry, company I, Winchester, Vir- ginia.....	8	0
205th Pennsylvania infantry, company I, old court-house..	16	20
187th Pennsylvania infantry, Camp Cadwallader, Pennsyl- vania.....	1	0
Chester hospital, Pennsylvania.....	2	0
209th Pennsylvania infantry, company G, Bermuda Hun- dred.....	54	35
202d Pennsylvania infantry, company C, White Plains...	27	15
McConnellsburg, Pennsylvania, independent scouts.....	6	2
Camp Cadwallader, Pennsylvania.....	1	0
49th Pennsylvania infantry, Winchester, Virginia.....	2	0
Jarvis hospital, Baltimore, Maryland.....	1	0
York hospital, York, Pennsylvania.....	6	0
Chattanooga, Tennessee.....	1	0
9th Pennsylvania cavalry, Whiteside, Tennessee.....	2	0
21st Pennsylvania cavalry, company B, City Point, Virginia	36	4
210th Pennsylvania infantry, company I.....	19	9
Company A, 1st regiment light artillery, Chapin's farm, Virginia.....	2	0
	<u>292</u>	<u>115</u>

For William H. Koontz, two hundred and ninety-two votes. For Alexander H. Coffroth, one hundred and fifteen votes. Adding said soldiers' vote thus returned, to the votes in the several election districts as previously ascertained in said county, as required by law, it was ascertained, and we do hereby certify, that the total vote for Congress in Adams county was as follows, viz: William H. Koontz had two thousand five hundred and twenty-five votes, (2,525;) Alexander H. Coffroth had two thousand seven hundred and fifty-nine votes, (2,759.)

In testimony whereof we have hereunto set our hands and seals at Gettysburg, Pennsylvania, this 28th day of October, A. D. 1864.

DAVID SWEENEY, [SEAL.]

Return Judge for Gettysburg.

JOHN W. WEIGLE, [SEAL.]

Return Judge for Highland.

HENRY WEIGLE, [SEAL.]

Return Judge for Butler.

WILLIAM S. CART, [SEAL.]

Return Judge for Menallen.

JOHN J. ALBERT, [SEAL.]

Return Judge for York Springs.

SEBASTIEN HEFER, [SEAL.]

Return Judge for Berwick borough.

SAMUEL T. MORITZ, [SEAL.]

Return Judge for Freedom.

No. 14.

GETTYSBURG, PA., October 28, 1864.

The undersigned, members of the board of return judges of election for the county of Adams, having declined to sign the certificate of returns this day made out, deem it due to themselves and the course of justice to explain the reasons therefor, and to make an official protest against the action of the majority of the judges, in excluding a large number of votes cast by Adams county volunteers, for alleged informality in the certificates.

Section 27, of the act of August 25, 1864, regulating the mode in which persons in military service may exercise the right of suffrage, expressly provides that "*No mere informality in the manner of carrying out or executing any of the provisions of this act shall invalidate any election held under the same, or authorize the return thereof to be rejected or set aside.*"

The intention of the legislature, in our judgment, as expressed in this section, is very clear. Contemplating the probability that in many of the camps the provisions of the law might be imperfectly understood, or the returns be defectively certified, the law forbids the return judges from rejecting returns on account of mere informality in the manner of carrying out or executing the provisions of the act, and expressly reserves to the courts and bodies having jurisdiction the duty of determining the legality of elections held or of votes cast.

Yet, in the face of these plain provisions of the act, a majority of the return judges undertook to reject and set aside eight returns for alleged informality, viz: the 138th Pennsylvania regiment, 184th Pennsylvania regiment, 202d Pennsylvania regiment, 21st Pennsylvania cavalry, 210th Pennsylvania regiment, Mower United States hospital, Cuyler United States hospital, and Mc Lellan United States hospital. These returns certify 158 votes to have been polled for William H. Koontz for Congress, and 50 votes for Alexander H. Coffroth, being a majority of 108 for William H. Koontz.

Regarding this action of a majority of the return judges as a clear violation of law, a gross outrage upon the rights of the soldiers whose suffrages have thus been summarily set aside, and calculated to defraud William H. Koontz, the Union candidate for Congress, of his right to a seat in Congress, we deemed it our duty to protest against their action, and refuse to sign the certificates.

D. SWENEY, *Return Judge for Gettysburg district.*

WILLIAM S. CART, *Return Judge for Menallen district.*

SEBASTIEN HEFER, *Return Judge for Berwick borough.*

SAMUEL T. MORITZ, *Return Judge for Freedom district.*

HENRY WEIGLE, *Return Judge for Butler district.*

JOHN W. WEIGLE, *Return Judge for Highland district.*

JOHN J. ALBERT, *Return Judge for York Springs district.*

Schedule of returns rejected.

	Koontz.	Coffroth.
Mower United States hospital, Philadelphia.....	1	—
Cuyler United States hospital, Philadelphia.....	1	—
McClellan United States hospital, Philadelphia.....	3	—
138th Pennsylvania regiment, Front Royal, Virginia.....	32	1
184th Pennsylvania regiment.....	39	21
202d Pennsylvania regiment, White Plains, Virginia.....	27	15
21st Pennsylvania cavalry, City Point, Virginia.....	36	4
210th Pennsylvania regiment.....	19	9
Total.....	158	50

No. 15.

SIR: You are hereby notified that at a meeting of the return judges of the several counties composing the sixteenth congressional district of the Commonwealth of Pennsylvania, to wit, the counties of Adams, Franklin, Fulton, Bedford, and Somerset; having met this day, as required by law, at the court-house in the borough of Chambersburg, in the county of Franklin, and computed the votes cast for a member of Congress in and for the said district, whereby it appears that at said election, you, the said William H. Koontz, having received the greatest number of votes for a member of the House of Representatives of the United States, we do hereby declare the said William H. Koontz duly elected the representative to the House of Representatives of the United States from the said sixteenth congressional district of said Commonwealth.

Witness our hands and seals this fourth day of November, A. D. 1864.

ALLEN S. WILL, *President, Somerset county.* [L. S.]

WILLIAM S. CART, *Adams county.* [L. S.]

JOHN WILHELM, *Franklin county.* [L. S.]

NATHAN WINTER, *Fulton county.* [L. S.]

NICHOLAS PECK, *Bedford county.* [L. S.]

Attest:

W. S. EVERETT,
G. O. SEILHAMER,
Clerks

WILLIAM H. KOONTZ, Esq.

No. 16.

We, the undersigned, return judges, elected by the board of return judges of the counties composing the 16th congressional district of Pennsylvania, viz., Adams, Bedford, Franklin, Fulton, and Somerset, to examine the returns and count the votes cast for member of the House of Representatives of the United States, cast in the counties for said office at a general election held on the second Tuesday of October, it being the 11th day of the month, having met in the courthouse in the borough of Chambersburg, on the 4th day of November, and having examined the returns and counted the votes cast in said district, do hereby certify that you, having received a majority of the votes cast as counted by us, are duly and legally elected member of the House of Representatives of the United States.

In witness whereof we have hereunto set our hands and seals this 4th day of November, A. D. 1864.

W. FINDLAY MANN, [L. S.]
Judge of Bedford county.

F. DIEHL, [L. S.]
Judge of Adams county.

JOHN H. LAKER, [L. S.]
Judge from Franklin.

NATHAN WINTER, [L. S.]
Judge from Fulton.

Attest:

JOHN R. ORR, *Clerk.*

Hon. A. H. COFFROTH, *Somerset, Pennsylvania.*

No. 19.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Bedford, Fulton, Franklin, Huntingdon, and Cambria counties, State of Pennsylvania, being in actual military service under the requisition of the President of the United States, in company H, of the 208th regiment of Pennsylvania volunteer infantry, held at the quarters of Captain Harvey Wishart, in camp army of the James, Virginia, William G. Eicholtz, J. C. Long, and R. N. Shimer being duly elected judges of the said election, and Joseph Fry and J. H. Wilt being duly appointed clerks of said election, being all severally sworn according to the certificates herewith returned.

Oaths of the judges and clerks.

We, William G. Eicholtz and J. C. Long and R. N. Shimer, judges of this election, and Joseph Fry and J. H. Wilt, clerks thereof, do each severally swear that we will duly perform the duties of judges and clerks of the said election, severally acting as set forth in the act of the general assembly of Pennsylvania, entitled "An act to regulate elections by soldiers in actual military service," according to law and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit or abuse in conducting the same.

WM. G. EICHOLTZ,
J. C. LONG,
ROBERT N. SHIMER,
Judges.

JOSEPH FRY,
JOHN H. WILT,
Clerks.

I hereby certify that the aforesaid J. C. Long and R. N. Shimer, judges, and Joseph Fry and J. H. Wilt, clerks, were, before proceeding to take any votes at said election, first duly sworn as aforesaid by me. Witness my hand this eleventh day of October, A. D. one thousand eight hundred and sixty-four.

WM. G. EICHOLTZ,

Judge of said Election.

I certify that William G. Eicholtz, judge of election aforesaid, was also duly sworn according to law by me. Witness my hand the date above written.

JOSEPH FRY,

Clerk of said Election.

We hereby certify that the aforesaid electors present, being more than ten, did select the aforesaid quarters of Captain H. Wishart to be the place for opening a poll for the said election. Witness our hands the day and year aforesaid.

WM. G. EICHOLTZ,

J. C. LONG,

ROBERT N. SHIMER,

Judges of said Election.

Attest:

JOSEPH FRY,

JOHN H. WILT,

Clerks.

Names of the electors voting at the said election and their county, city, borough, township, ward or precinct of residence.

Daniel B. Bulger, Bedford county, Middle Woodbury township; Levi Stephy, Bedford county, Middle Woodbury township; John Hines, Bedford county, Middle Woodbury township; David S. Johnson, Bedford county, Middle Woodbury township; David B. Bulger, Bedford county, Middle Woodbury township; Levi Cramer, Bedford county, Middle Woodbury township; David F. Keagy, Bedford county, Middle Woodbury township; George G. Gibson, Bedford county, Hopewell township; Joseph Ross, Bedford county, Hopewell township; John B. Fluke, Bedford county, Hopewell township; Joseph Gates, Bedford county, Hopewell township; Simon College, Bedford county, Hopewell township; Joseph Fry, Bedford county, Hopewell township; John R. Oaks, Bedford county, Liberty township; Joseph C. Long, Bedford county, South Woodbury township; Wm. G. Eicholtz, Bedford county, South Woodbury township; John McDonald, Bedford county, South Woodbury township; Adam Coniner, Bedford county, Monroe township; Alexander Skipper, Bedford county, Broadtop township; Job L. Acres, Bedford county, Monroe township; Jacob Crawford, Bedford county, Southampton township; James A. Schade, Bedford county, South Woodbury township; Abraham M. May, Bedford county, Monroe township; Wilson L. Sams, Bedford county, Monroe township; Job Robinson, on age, Bedford county, Monroe township; Henry Dilbaugh, Huntingdon county, Walker township; Alexander Reed, Huntingdon county, Walker township; John A. Boerner, Fulton county, borough of McConnellsburg; Robert N. Shimer, Fulton county, borough of McConnellsburg; John H. Wilt, Fulton county, borough of McConnellsburg; William Stanen, Fulton county, borough of McConnellsburg; James H. May, Fulton county, Wells township; Nicholas Ott, Fulton county, Todd township; William B. King, Fulton county, Licking Creek township; Patrick M. Wilson, Fulton county, Licking Creek township; Harvey Wishart, Fulton county, Wells township; William A. Walker, Huntingdon county, Union township; Samuel Uglan, on age, Franklin county, Chambersburg; Jacob Witters, Cambria county, White township; Jacob Hamman, Fulton county, Bethel township; Andreas Gringer, Fulton county, Bethel township; William Faulkner, Bedford county, Middle Woodbury township;

Ezekiel Gaster, Fulton county, Wells township; John A. Slick, Bedford county, St. Clair township; Samuel Langdon, Bedford county, Broadtop township; Isaiah Lahman, Fulton county, Bethel township; Joseph Hoopengardner, Fulton county, Bethel township; John E. Runel, Fulton county, Todd township; Nicholson Uglan, Franklin county, Chambersburg; J. W. Hann, Bedford county, West Providence township; Jesse Peck, Bedford county, East Providence township; Joseph L. Dougherty, Bedford county, South Woodbury township; Alexander Coulter, on age, Huntingdon county, Walker township; Barney Basto, Cambria county, White township; Samuel Binkley, Fulton county, McConnellsburg; Layfayette Burns, Bedford county, Middle Woodbury township; George Keagy, Bedford county, Middle Woodbury township; William Frederick, Bedford county, Middle Woodbury township; Jacob College, Bedford county, Middle Woodbury township; Josiah F. Barkley, Bedford county, Middle Woodbury township.

It is hereby certified by us that the above list of electors voting at the said election is correct, and that the number of electors of Huntingdon, Cambria, Bedford, Fulton, and Franklin counties, State of Pennsylvania, voting at the said election, amounts to sixty. Witness our hands the day and year aforesaid.

WM. G. EICHOLTZ,

J. C. LONG,

ROBERT N. SHIMER,

Judges of the Election.

Attest:

JOHN H. WILT,

JOSEPH FRY,

Clerks of the Election.

Tally-paper, or list of votes for each person voted for at the said election by the qualified voters of Bedford, Fulton, Franklin, Huntingdon, and Cambria counties, State of Pennsylvania.

For representative in the House of Representatives of the United States, William H. Koontz had thirty-four votes; A. H. Coffroth had eighteen votes; Robert L. Johnson had four votes.

For president judge, Alex. King had thirty-four votes; F. M. Kimmel had twenty votes.

For senator in the Senate in the State of Pennsylvania, Henry J. Walters had three votes; Robert W. Christy had three votes; Lewis W. Hall had one vote; Kirk Haines had one vote.

For representatives in the house of representatives of Pennsylvania, David B. Armstrong had thirty-two votes; Moses A. Ross had thirty-two votes; Hiram Findlay had eighteen votes; B. F. Meyers had eighteen votes; J. Simpson Africa had three votes; John W. Kearns had three votes; Alexander McLure had two votes; Samuel Roath had two votes; John W. Swope had one vote; John Balsbach had one vote; Cyrus L. Pershing had one vote.

For district attorney, William A. Stephens had four votes; J. Nelson Sipes had five votes.

For county surveyor, Walter M. Greenland had three votes; Henry Wilson had one vote.

For commissioner, Hugh B. Davidson had two votes; G. W. Seighty had six votes; Michael Wertz had twelve votes; Edward Dunnegan had one vote.

For directors of the poor, John H. Criswell had two votes; Hiram Davis had twelve votes; George Orris had one vote.

For sheriff, James Meyers had one vote.

For coroner, Hiram E. Wertz had two votes; Jacob Mumma had six votes.

For county commissioner, Henry L. Haney had four votes; Abraham H. Hull had twenty-three votes; Benjamin A. Lyou had nine votes.

For directors of the poor, Andrew Shaner (three years) had four votes; John Enyeast (one year) had four votes; Asa S. Stuckey had twenty-three votes.

For county treasurer, Alexander Mayne had eight votes; D. R. Dunlap had six votes.

For county auditor, B. McClellan Alexander had three votes; Emanuel J. Diehl had twenty-three votes; John Charlton had nine votes; Morrow R. Skinner had two votes; A. J. Fose had six votes; Livingston Robb had one vote; David Evans had twelve votes; John A. Kennedy had one vote.

We hereby certify that the aforesaid tally-paper and list of votes is correct. Witness our hands the day and year aforesaid.

JOSEPH FRY,
JOHN H. WILT,
Clerks.

Return of the election.

At an election held by the electors of the afore-mentioned counties in company H, of the 208th regiment of Pennsylvania soldiers, at camp of the army of the James, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, there were cast for representatives in the House of Representatives in the Congress of the United States fifty-six votes, of which William H. Koontz had thirty-four votes; A. H. Coffroth had eighteen votes; Robert L. Johnson had four votes.

For president judge there were cast fifty-four votes; Alexander King had thirty-four votes; F. M. Kimmel had twenty votes.

For senator in the senate of the State of Pennsylvania, there were cast four votes, of which Henry J. Walters had three votes; Robert W. Christy had three votes; Louis W. Hall had one vote; Kirk Haines had one vote.

For representatives in the house of representatives of Pennsylvania, there were cast fifty-seven votes, of which David B. Armstrong had thirty-two votes; Moses A. Ross had thirty-two votes; Hiram Findley had eighteen votes; B. F. Meyers had eighteen votes; J. Simpson Africa had three votes; John W. Kearns had three votes; Alexander McClure had two votes; Samuel Roath had two votes; John N. Swoope had one vote; John Balsback had one vote; Cyrus L. Pershing had one vote.

For sheriff, there was cast one vote: James Meyers had one vote.

For county commissioners, there were cast fifty-seven votes; Abraham H. Hall had twenty-three votes; Henry L. Harvey had four votes; Benjamin A. Lyon had nine votes; Hugh B. Davidson had two votes; G. W. Leighty had six votes; Michael Wertz had twelve votes; Edward Dunnigan had one vote.

For county treasurer, there were cast fourteen votes: Alexander Mayne had eight votes; D. R. Dunlap had six votes.

For directors of the poor, there were cast forty-two votes: Andrew Sharer (three years) had four votes; John Enyeast (one year) had four votes; Asa S. Stuckey had twenty-three votes; John H. Criswell had two votes; Hiram Davis had twelve votes; George Orris had one vote.

For district attorney, there were cast nine votes: William A. Stephens had four votes; J. Nelson Sipes had five votes.

For county surveyor, there were cast four votes: Walter W. Greenland had three votes; Henry Wilson had one vote.

For the office of auditor, there were cast fifty-seven votes, of which R. McClelland Alexander had three votes; Emanuel Diehl had twenty-three votes; John Charlton had nine votes.

For the office of auditor, there were cast nine votes, of which Morrow R. Skinner had two votes; A. J. Fore had six votes; Livingston Robb had one vote.

For the office of auditor, there were cast thirteen votes, of which David Evans had twelve votes ; John A. Kennedy had one vote.

For the office of coroner, there were cast eight votes, of which Hiram E. Wertz had two votes ; Jacob Munnra had six votes.

A true return of the election held, as aforesaid, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, certified by us the day and year aforesaid.

First Lieut. WM. G. EICHOLTZ,
Company H, 208th Regiment Pennsylvania Soldiers,
 J. C. LONG,
Company H, 208th Regiment Pennsylvania Soldiers,
 ROBERT N. SHIMER,
Company H, 208th Regiment Pennsylvania Soldiers,
Judges of said Election.

Attest :

JOSEPH FRY,
 JOHN HOBELT,
Clerks.

STATE OF PENNSYLVANIA, *Bedford county, ss :*

I, O E. Shannon, prothonotary of the court of common pleas of said county, hereby certify that the foregoing is a full and true copy of a poll-book returned to my office; that there being more votes on the tally-list than there were voters for Congress and judge, and that part of said return being impossible of enumeration, was not certified to the judges, and was therefore not counted by them in the enumeration of the votes for those offices.

Witness my hand and official seal, at Bedford, this 11th day of December, A. D. 1865.

[SEAL.]

O. E. SHANNON, *Prothonotary.*

No. 20.

POLL-BOOK OF THE ELECTION

Held on Tuesday, the 11th day of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Bedford county, in the State of Pennsylvania, in the actual military service under the requisition of the President of the United States, and being unable to attend any company poll or other proper place of election ; this election being held at Barrack No. 1, Soldiers' Rest, Washington city, D. C., which place the said electors, being present, have selected for opening a poll for the said election and certify herein :

David Bollman, William Brallier, and John H. Akers, being then and there duly elected judges of the said election, and Barton A. Cooper and Josiah H. Anderson being duly appointed clerks of said election, and being all severally affirmed according to the certificates herewith returned.

Oaths of the judges and clerks.

We, David Bollman, William Brallier, and John H. Akers, judges of this election, and Barton A. Cooper and Josiah H. Anderson, clerks thereof, do severally affirm that we will duly perform the duties of judges and clerks of the said election, severally acting as set forth in the act of the general assembly of Pennsylvania, entitled "An act to regulate elections by soldiers in actual

military service," according to law, and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same election.

DAVID BOLLMAN,
WILLIAM BRALLIER,
JOHN H. AKERS,
Judges.

BARTON A. COOPER,
JOSIAH H. ANDERSON,
Clerks.

I hereby certify that David Bollman, William Brallier, and John H. Akers, judges, and ——— and Josiah H. Anderson, clerks aforesaid, were, before proceeding to take any votes at said election, first duly affirmed, as aforesaid, by me.

Witness my hand this eleventh day of October, A. D. one thousand eight hundred and sixty-four.

BARTON A. COOPER,
Clerk of said Election.

I certify that Barton A. Cooper, clerk of election aforesaid, was also duly so affirmed according to law by me.

Witness my hand the date above written.

DAVID BOLLMAN,
Judge of said Election.

We hereby certify that the aforesaid electors present, being more than ten, did select the aforesaid Barrack No. 1, Soldiers' Rest, Washington city, D. C., to be the place of opening a poll for the said election.

Witness our hands the day and year aforesaid.

DAVID BOLLMAN,
WILLIAM BRALLIER,
JOHN H. AKERS,
Judges of said Election.

Attest :

BARTON A. COOPER,
JOSIAH H. ANDERSON,
Clerks.

Number and names of the electors voting at the said election, and their county, city, borough, township, ward, or precinct of residence.

George Nycum, Bedford county, Monroe township ; Matthias Smith, Bedford county, Bedford township ; Adam Shass, Bedford county, East Providence township ; Abraham Hartzell, Bedford county, Bedford township ; Zachariah Clark, Bedford county, Snake Spring township ; Andrew Poe, Bedford county, Middle Woodbury township ; Jacob Cashman, Bedford county, Middle Woodbury township ; George P. Wertz, Bedford county, Hopewell township ; Ezra P. Kay, Bedford county, Hopewell township ; Henry Grimes, Bedford county, Bedford township ; David Smith, Bedford county, Bedford township ; Wm. Swartz, Bedford county, S. Woodbury township ; James McCreary, Bedford county, Bedford township ; S. C. Mullen, Bedford county, Bedford township ; Andrew P. Miller, Bedford county, Harrison township ; Samuel Davis, Bedford county, Hopewell township ; Wm. Brandt, Bedford county, Harrison township ; Jason McDaniel, Bedford county, Monroe township ; Geo. W. Stuckey, Bedford county, Colerain township ; Daniel D. Snowberger, Bedford county, Middle Woodbury township ; Edwin B. Wright, Bedford county, Napier township ;

Enos Ellis, Bedford county, Napier township; Jas. W. Growden, Cumberland Valley township; Andrew J. Davis, Bedford county, Colerain township; Geo. C. Rowser, Bedford county, Napier township; Adam Leonard, Bedford county, Snake Spring township; Walter B. Gilson, Bedford county, Bedford township; John Arnel, Bedford county, Juniata township; John Smith, Bedford county, Juniata township; Fred. Hillegass, Bedford county, Bedford township; Jeremiah Ward, Bedford county, Monroe township; Samuel Strengtiff, Bedford county, Monroe township; Aaron Cosle, Bedford county, St. Clair township; Fred. Clycomb, Bedford county, Union township; Jno. S. Growdon, Bedford county, Cumberland Valley township; Wm. J. Brandt, Bedford county, Cumberland Valley township; Michael Miller, Bedford county, Southampton township; Jacob Manspeher, Bedford county, East Providence township; John Waxham, Bedford county, Monroe township; Samuel S. Burket, Bedford county, Harrison township; Geo. W. Resiard, Bedford county, Hopewell township; Jas. Speace, Bedford county, Hopewell township; Daniel Bollman, Bedford county, Hopewell township; Wm. Bramlie, Bedford county, Hopewell township; J. H. Andus, Bedford county, Broad Top township; J. W. Nycum, Bedford county, Monroe township; B. A. Cooper, Bedford county, Monroe township.

It is hereby certified by us that the above list of electors voting at the said election is correct, and that the number of electors voting at the said election amounts to forty-six.

Witness our hands the day and year aforesaid.

D. BOLLMAN,
WM. BRALLIER,
JOHN H. AKERS,
Judges of the Election.

J. H. ANDERSON,
B. A. COOPER,
Clerks of the Election.

Tally-papers or list of votes for each person voted for at the said election by the qualified voters of Bedford county, State of Pennsylvania, for representative in the House of Representatives in the Congress of the United States, sixteenth district.

For Congress, Wm. H. Koontz had fifty-eight votes; A. H. Coffroth had twenty-nine votes.

For representatives in the house of representatives of Pennsylvania, L. B. Armstrong had nineteen votes; Moses A. Ross had nineteen votes; B. F. M. Meyers had twenty-seven votes; Hiram Findley had twenty-seven votes.

For commissioners, Abraham H. Hall had nine votes; G. W. Leighty had ten votes; Michael Wertz had ten votes.

For directors of the poor, Asa S. Stuckey had nine votes; Hiram Davis had ten votes.

For auditor, Emanuel J. Diehl had nine votes; David Evans had ten votes.

For treasurer, D. R. Dunlap had — votes.

For president judge, A. King had nineteen votes; F. M. Kimmell had twenty-four votes.

We hereby certify that the aforesaid tally-paper and list of votes is correct.

Witness our hands the day and year aforesaid.

J. H. ANDERSON.
B. A. COOPER.

A true return of the election held as aforesaid on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four.

Certified by us the day and year aforesaid.

J. H. ANDERSON,
B. A. COOPER,
Clerks.

D BOLLMAN,
WM. BRALLIER,
J. H. AKERS,
Judges of the said Election.

PENNSYLVANIA, *Bedford county, ss :*

I, O. E. Shannon, prothonotary of the court of common pleas of said county, hereby certify that the foregoing is a full and true copy of a poll-book returned to my office; that there being more votes on the tally-list than there were voters for Congress, and that part of said return being impossible of enumeration, was not certified to the judges, and was therefore not counted by them in the enumeration of the votes for that office.

Witness my hand and official seal, at Bedford, this 11th day of December, A. D. 1865.

[SEAL.]

O. E. SHANNON, *Prothonotary.*

No. 21.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Bedford county, State of Pennsylvania, being in actual military service under the requisition of the President of the United States, in company —, of the — regiment of Pennsylvania —, held at Barracks No. 1, Soldiers' Rest, Washington city, D. C., David Bollman, William Brallier, and John H. Akers being duly elected judges of the said election, and Barton A. Cooper and Josiah H. Anderson being duly appointed clerks of said election, being all severally affirmed according to the certificates herewith returned.

Oaths of judges and clerks.

We, David Bollman, William Brallier, and John H. Akers, judges of this election, and Barton A. Cooper and Josiah H. Anderson, clerks thereof, do each severally affirm that we will duly perform the duties of judges and clerks of the said election, severally acting as set forth in the act of the general assembly of Pennsylvania entitled "An act to regulate elections by soldiers in actual military service," according to law and to the best of our abilities, and that we will studiously endeavor to prevent frauds, deceit, or abuse, in conducting the same.

DAVID BOLLMAN,
WILLIAM BRALLIER,
JOHN H. AKERS,
Judges.

BARTON A. COOPER,
JOSIAH H. ANDERSON,
Clerks

I hereby certify that the aforesaid David Bollman, William Brallier, and John H. Akers, judges, and Josiah H. Anderson, clerk, were, before proceeding to take any votes at said election, first duly affirmed, as aforesaid, by me.

Witness my hand, this eleventh day of October, A. D. one thousand eight hundred and sixty-four.

BARTON A. COOPER,
Clerk of said Election.

I certify that Barton A. Cooper, clerk of election aforesaid, was also so duly affirmed according to law, by me.

Witness my hand, the date above written.

DAVID BOLLMAN,
Judge of said Election.

We hereby certify that the aforesaid electors present, being more than ten, did select the aforesaid Barrack No. 1, Soldiers' Rest, Washington, D. C., to be the place for opening a poll for the said election.

Witness our hands, the day and year aforesaid.

DAVID BOLLMAN,
WILLIAM BRALLIER,
JOHN H. AKERS,
Judges of said Election.

Attest:

BARTON A. COOPER,
JOSIAH H. ANDERSON,
Clerks.

Names of the electors voting at the said election, and their counties and township.

George Archam, Bedford county, St. Clair township; Mathias Smith, Bedford county, Bedford township; Adam Shush, Bedford county, East Providence township; A. Hartley, Bedford county, Bedford township; Zach. Clark, Bedford county, Snake Spring township; A. Pole, Bedford county, Middle Woodbury township; Jac. Cashman, Bedford county, Middle Woodbury township; George F. Wertz, Bedford county, Cumberland township; E. Kay, Bedford county, Hopewell township; Samuel Smith, Bedford county, Bedford township; E. Grimes, Bedford county, Bedford township; D. Smith, Bedford county, Bedford township; William Swartz, Bedford county, South Woodbury township; Amos McCray, Bedford county, Bedford township; S. C. Mullin, Bedford county, Bedford township; A. P. Miller, Bedford county, Harrison township; Samuel Davis, Bedford county, Hopewell township; William Brant, Bedford county, Harrison township; J. McDowell, Bedford county, Monroe township; G. W. Starkey, Bedford county, Colerain township; D. W. Snonburger, Bedford county, Middle Woodbury township; E. V. Right, Bedford county, Napier township; Enos Ellis, Bedford county, Napier township; J. W. Growden, Bedford county, Cumberland Valley township; A. J. Davis, Bedford county, Colerain township; G. C. Reuzer, Bedford county, Napier township; A. Lenhard, Bedford county, Snake Spring township; W. B. Gilsen, Bedford county, Bedford township; John Armall, Bedford county, Juniata township; J. Smith, Bedford county, Juniata township; T. Hellegas, Bedford county, Monroe township; J. Ward, Bedford county, Monroe township; Samuel Straightf, Bedford county, Monroe township; Aaron Corl, Bedford county, St. Clair township; Fred. Clayborn, Bedford county, Union township; J. S. Ginoden, Bedford county, Cumberland township; W. J. Brant, Bedford county, Cumberland township; M. Miller, Bedford county, Southampton township; J. Manspeaker, Bedford county, East Providence township; John Wanfield, Bedford county, East Providence township; Samuel F. Burkart, Bedford county, Harrison township; George W. Rinard,

Fulton county, Hopewell township; Jacob Speece, Fulton county, Hopewell township, David Bollman, Fulton county, Hopewell township; William Brallier, Fulton county, Hopewell township; J. H. Anderson, Butler county, Broad Top township; J. W. Nycum, Fulton county, Monroe township; B. A. Cooper, Fulton county, Monroe township.

It is hereby certified by us that the above list of electors voting at the said election is correct, and that the number of electors of Bedford county, State of Pennsylvania, voting at the said election, amounts to 48.

Witness our hands and seals, the day aforesaid.

D. BOLLMAN,
WM. BRALLIER,
J. H. AKERS,
Judges of the Election.

Attest:

J. H. ANDERSON,
B. A. COOPER,
Clerks of the Election.

Tally-paper, or list of votes for each person voted for at the said election by the qualified voters of Bedford county, State of Pennsylvania, for representative in the House of Representatives of the United States, sixteenth district.

For Congress, William H. Koontz had fifty-eight votes; A. H. Coffroth had twenty-nine votes.

For representatives in the house of representatives of Pennsylvania, D. B. Armstrong had nineteen votes; Moses A. Ross had nineteen votes; Hiram Findlay had twenty-seven votes; B. F. Meyers had twenty-seven votes.

For commissioner, G. W. Leighty had no votes; A. H. Hull had nine votes; Michael Wertz had ten votes.

For director of the poor, Asa S. Stooky had nine votes; Hiram Davis had ten votes.

For auditor, E. J. Diehl had nine votes; David Evans had ten votes.

For district attorney, J. A. Sipes had no votes

For treasurer, D. R. Dunlap had no votes.

For auditor, Judge A. King had nineteen votes; F. M. Kimmell had twenty-four votes.

We hereby certify that the aforesaid tally-paper and list of votes is correct. Witness our hands, the day and year aforesaid.

J. H. ANDERSON,
B. A. COOPER,
Clerks.

A true return of the election held as aforesaid on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four. Certified by us the day and year aforesaid.

D. BOLLMAN,
W. BRALLIER,
J. H. AKERS,
Judges of the said Election.

Attest:

J. H. ANDERSON,
B. A. COOPER,
Clerks.

PENNSYLVANIA, ss:

I do hereby certify that the foregoing is a correct copy of said election return so far as the same relates to the county of Bedford.

In witness whereof I have hereunto set my hand, and caused the seal of [SEAL.] said office to be affixed, this twenty-sixth day of October, A. D. one thousand eight hundred and sixty-four.

W. H. ARMSTRONG,

Deputy Secretary of the Commonwealth.

BEDFORD COUNTY, ss:

I, O. E. Shannon, prothonotary of said county, certify that the foregoing is a full and true copy of a poll-book, (except printed form in blank,) or copy of poll-book, received in my office from the secretary of the Commonwealth.

Witness my hand and official seal at Bedford, the 27th day of January, [SEAL.] A. D. 1865.

O. E. SHANNON, *Prothonotary.*

No. 22.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Adams county, State of Pennsylvania, being in actual military service, under the requisition of the President of the United States, in company C of the 202d regiment of Pennsylvania volunteers, held at White Plains, Virginia; and John F. Blair, first lieutenant, being duly elected judge of the said election, and Abraham King and Francis A. Noel being duly appointed clerks of said election, being all severally sworn according to the certificates herewith returned.

Oaths of the judges and clerks.

I, John F. Blair, first lieutenant, judge of this election, and Abraham King and Francis A. Noel, clerks thereof, do each severally swear that we will duly perform the duties of judge and clerks of the said election, severally acting as set forth in the act of the general assembly of Pennsylvania entitled "An act to regulate elections by soldiers in actual military service," according to law and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same.

JOHN F. BLAIR, *Judge.*

ABRAHAM KING,

FRANCIS NOEL,

Clerks.

I hereby certify that the aforesaid John F. Blair, judge, and Abraham King and Francis A. Noel, clerks, were, before proceeding to take any votes at said election, first duly sworn as aforesaid by me, John F. Blair.

Witness my hand, this eleventh day of October, A. D. one thousand eight hundred and sixty-four.

JOHN F. BLAIR,

Judge of said Election.

I certify that John F. Blair, judge of election aforesaid, was also duly so sworn according to law by me.

Witness my hand, the date above written.

ABRAHAM KING,

Clerk of said Election.

We hereby certify that the aforesaid electors present, being more than ten, did select the aforesaid ——— to be the place for opening a poll for the said election.

Witness our hands, the day and year aforesaid.

J. F. BLAIR,

Judge of said Election.

Attest:

ABRAHAM KING,

FRANCIS A. NOEL,

Clerks.

Number and names of the electors voting at the said election, and their county, city, borough, township, ward, or precinct of residence.

John Carbaugh, Adams county, Oxford township; John Deitrick, Adams county, Oxford township; Jeremiah Blair, Adams county, Mount Pleasant township; Wesley Reary, Adams county, Straban township; Jacob Hupfer, Adams county, Oxford township; Abraham King, Adams county, Straban township; John J. McKinney, second lieutenant, Adams county, Conowago township; Cornelius Miller, Adams county, Berwick borough; John J. Clapsaddle, Adams county, Mount Pleasant township; Samuel Jacobs, Adams county, Berwick township; Hiram Kepner, Adams county, Berwick township; Joseph Miller, Adams county, Oxford township; John Smith, Adams county, Oxford township; Elias Roth, Adams county, Oxford township; George C. Reidle, Adams county, Mount Joy township; Charles Buntz, Adams county, Conowago, township; Jacob J. Diehl, Adams county, Mount Pleasant township; George H. Bricker, Adams county, Tyrone township; Daniel Small, Adams county, Conowago township; Anthony Clunk, Adams county, Union township; John F. Blair, first lieutenant, Adams county, Oxford township; Adam L. McKinney, Adams county, Conowago township; James W. Ford, Adams county, Straban township; Richard Wolf, Adams county, Mount Pleasant township; Francis A. Noel, Adams county, Mount Pleasant township; Ephraim Bair, Adams county, Mount Pleasant township; George Kesselring, Adams county, Berwick borough; John B. Shinner, Adams county, Berwick township; Daniel L. Lightner, Adams county, Berwick township; Frederick Shanabrough, Adams county, Conowago township; Leo Staub, Adams county, Oxford township; John Britcher, Adams county, Conowago township; Jess. Wolfer, Adams county, Oxford township; Henry Weaver, Adams county, Union township; Francis Overbaugh, Adams county, Conowago township; William H. Wegner, Adams county, Hamilton township; Adam Carl, Adams county, Mount Pleasant township; Michael McCaden, Adams county, Oxford township; Lewis Weaver, Adams county, Mount Pleasant township; Jacob Low, Adams county, Oxford township; David Stonesifer, Adams county, Mount Pleasant township; Elexius Grim, Adams county, Oxford township.

It is hereby certified by us that the above list of electors voting at the said election is correct, and that the number of electors of Adams county, State of Pennsylvania, voting at the said election, amounts to forty-two.

Witness our hands the day and year aforesaid, October 11, 1864.

JOHN F. BLAIR,

Judge of the Election.

Attest:

ABRAHAM KING,

FRANCIS A. NOEL,

Clerks of the Election.

Tally-paper or list of votes for each person voted for at the said election by the qualified voters of ——— county, State of Pennsylvania.

For representative in the House of Representatives of the United States, General Alexander H. Coffroth had fifteen votes; William H. Koontz had twenty-seven votes.

For representative in the house of representatives of Pennsylvania, James H. Marshall had fifteen votes; David M. Myers had twenty-seven votes.

For county commissioner, Abraham Krise, of P., had fifteen votes; John Day had twenty-seven votes

For director of the poor, John N. Graft had fifteen votes.

For county auditor, Joseph Burkee (three years) had fifteen votes; Jacob Hull (two years) had fifteen votes; Isaac N. Durboraw (three years) had twenty-seven votes; Joseph Kepner (two years) had twenty-seven votes.

We hereby certify that the aforesaid tally-paper and list of votes is correct.

Witness our hands the day and year aforesaid, this the 11th day of October, A. D. 1864.

ABRAHAM KING,
FRANCIS A. NOEL,
Clerks.

Return of the election.

At an election held by the electors of Adams county, in company C of the 202d regiment of Pennsylvania soldiers, at White Plains, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, there were cast—

For representative in the House of Representatives in the Congress of the United States, forty-two votes, of which William H. Coffroth had fifteen votes; William H. Koontz had twenty-seven votes.

For representatives in the house of representatives of Pennsylvania, there were cast forty-two votes, of which James H. Marshall had fifteen votes; David M. Myers had twenty-seven votes.

For the office of county commissioner, there were cast forty-two votes, of which Abraham Krise, of P., had fifteen votes; John Day had twenty-seven votes.

For the office of director of the poor, there were cast forty-two votes, of which Colonel John N. Graft had fifteen votes; Ephraim D. Newman had twenty-seven votes.

For the office of county auditor, there were cast forty-two votes, of which Joseph Burkee (three years) had fifteen votes; Jacob Hull (two years) had fifteen votes; Isaac N. Durboraw (three years) had twenty-seven votes; Joseph Kepner (two years) had twenty-seven votes.

A true return of the election held, as aforesaid, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, certified by us, the day and year aforesaid.

ANTHONY W. KLUNK, *Company C, 202d Regiment.*
JOSEPH MILLER, *Company C, 202d Regiment.*
WESLEY A. REARY, *Company C, 202d Regiment.*
JOHN F. BLAIR, *First Lieutenant.*

Attest :

ABRAHAM KING,
FRANCIS A. NOEL,
Clerks.

(Tickets enclosed.)

I do hereby certify that the foregoing is a true copy, taken from the original in the office of the prothonotary of Adams county, Pennsylvania.

[SEAL.]

JACOB BUSHEY, *Prothonotary*.

GETTYSBURG, *February 17, 1865.*

No. 23.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Adams county, in the State of Pennsylvania, in the actual military service under the requisition of the President of the United States, and being unable to attend any other proper place of election; this election being held at Mower United States army hospital, which place the said electors, being present, have selected for opening a poll, and certify herein; William H. Turner, W. Martin, and W. S. Bowman being then and there duly elected judges of the said election, and ——— and ——— being duly appointed clerks of the same, and having been duly sworn or affirmed according to law.

WILKIE MARTIN,
W. H. TURNER,
W. S. BOWMAN,

Judges.

W. A. CALDERWOOD,
R. J. EDMUND,

Clerks.

Number and names of the electors, voting at the said election, who are residents of Adams county, with their city, borough, township, ward, or precinct.

1. Edward C. Blocher, Menallen township.

Tally-paper or list of votes and returns for each person voted for at the said election by the qualified voters of Adams county.

For representative in the House of Representatives in the Congress of the United States, Wm. H. Koontz had one (1) vote.

For representative in the house of representatives of Pennsylvania, David M. Myers had one (1) vote.

We hereby certify that the aforesaid tally-papers, list of voters, and returns of the election held as aforesaid, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, certified by us the day and year aforesaid, is correct and a true return thereof.

WILKIE MARTIN,
W. H. TURNER,
W. S. BOWMAN,

Judges of said Election.

W. A. CALDERWOOD,
R. J. EDMUND,

Clerks.

Attest:

(Ticket enclosed.)

I do hereby certify that the foregoing is a true copy, taken from the original in the office of the prothonotary of Adams county, Pennsylvania.

JACOB BUSHEY, *Prothonotary*.

GETTYSBURG, *February 17, 1864.*

No. 24.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Adams county, in the State of Pennsylvania, in the actual military service under the requisition of the President of the United States, and being unable to attend any other place of election; this election being held at Cuyler United States army hospital, Philadelphia, which place the said electors, being present, have selected for opening a poll, and certify herein; Darius L. Sanders, James Kester, and Craig Carney being then and there duly elected judges of the said election, and Henry Kingston and Robert C. Clark being duly appointed clerks of the same, and having been duly sworn or affirmed according to law.

DARIUS L. SANDERS,
Sergt. Co. H, 148th Pa.,
 JAMES KESTER,
Corp. Co. F, 143d Pa. Vols.,
 CRAIG CARNEY,
Private Co. E, 99th Pa.,
Judges.
 HENRY KINGSTON,
Sergt. Co. E, 188th Pa.,
 ROBERT C. CLARK,
162d Co., V. R. C.,
Clerks.

Number and names of the electors, voting at the said election, who are residents of Adams county, with their city, borough, township, ward, or precinct.

1. Henry Rupp, private Co. H, 188th Pa., Huntington township.

Tally-paper or list of votes and returns for each person voted for at the said election by the qualified voters of Adams county.

For representative in the House of Representatives in the Congress of the United States, William H. Koontz had one (1) vote.

For representative in the house of representatives of Pennsylvania, David M. Myers had one (1) vote.

We hereby certify that the aforesaid tally-papers and return of the election held as aforesaid, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, certified by us the day and year aforesaid, is correct and a true return thereof.

DARIUS L. SANDERS,
Sergt. Co. H, 148th Pa.,
 JAMES KESTER,
Corp. Co. F, 143d Pa. Vols.,
 CRAIG CARNEY,
Private Co. E, 99th Pa.,
Judges of said Election.

Attest:

HENRY KINGSTON,
Sergt. Co. E, 188th Pa.,
 ROBERT C. CLARK,
162d Co., V. R. C.,
Clerks.

(Ticket enclosed.)

I do hereby certify that the foregoing is a true copy, taken from the original in the office of the prothonotary of Adams county, Pennsylvania.

[SEAL.]

JACOB BUSHEY, *Prothonotary.*

GETTYSBURG, *February 17, 1865.*

No. 25.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Adams county, in the State of Pennsylvania, in the actual military service under the requisition of the President of the United States, and being unable to attend any other proper place of election; this election being held at McClellan United States army general hospital, which place the said electors, being present, have selected for opening a poll, and certify herein; W. Cox, Wm. H. Walling, and John M. Kepler being then and there duly elected judges of the said election; and Charles Stine and A. T. Black being duly appointed clerks of the same, and having been duly sworn or affirmed according to law.

JOHN M. KEPLER,
WILLIAM COX,
W. W. WALLING,
Judges.

CHARLES A. STINE,
A. T. BLACK,
Clerks.

Number and names of the electors voting at the said election who are residents of Adams county, with their city, borough, township, ward, or precinct.

1. George Booth, company B, 138th regiment Pennsylvania volunteers, Littlestown.
2. William D. Hambouch, company I, 87th regiment Pennsylvania volunteers, Conowago township.
3. John Noel, company I, 87th regiment Pennsylvania volunteers, Mount Pleasant.

Tally-paper or list of votes, and returns for each person voted for at the said election by the qualified voters of Adams county.

For representative in the House of Representatives in the Congress of the United States, Wm. H. Koontz had three votes.

For representative in the house of representatives of Pennsylvania, David M. Myers had three votes.

For auditor, Isaac Durboraw (three years) had one vote; Joseph Kepner (two years) had one vote.

For director of the poor, Ephraim D. Newman had one vote.

For commissioner, John Day had one vote.

We hereby certify that the aforesaid tally-papers, list of voters, and return of the election held as aforesaid, on the second Tuesday of October, A. D. one

thousand eight hundred and sixty-four, certified by us the day and year aforesaid, is correct and a true return thereof, there being more than ten qualified voters of said State present at the election held as aforesaid.

WILLIAM COX,
W. H. WALLING,
JOHN M. KEPLER,
Judges of said Election.

Attest:

CHARLES A. STINE,
A. T. BLACK,
Clerks.

(Tickets enclosed.)

I do hereby certify that the foregoing is a true copy taken from the original in the office of the prothonotary of Adams county, Pennsylvania.

[SEAL.]

JACOB BUSHEY, *Prothonotary.*

GETTYSBURG, *February 17, 1865.*

At an election held by the electors of Adams county, in companies B and G, of the 138th regiment Pennsylvania soldiers, at camp near Front Royal, Virginia, there were thirty-three votes cast for Congress, of which William H. Koontz received thirty-two votes, and Alexander H. Coffroth received one vote. Thirty-three votes were cast for assembly, of which David M. Myers received thirty-one votes, and James H. Marshall received two votes. Thirty-three votes were cast for commissioner, of which John Day received thirty-three votes. Thirty-three votes were cast for director of the poor, of which Ephraim D. Newman received thirty-one votes, and John N. Graft received two votes. Thirty-three votes were cast for auditor, (three years,) of which Isaac N. Durboraw received thirty-two votes, and Joseph Burkee received one vote. Thirty-three votes were cast for auditor, (two years,) of which Joseph Kepner received thirty-one votes, and Jacob Hull received two votes.

A true return of the election held as aforesaid, on the eleventh day of October, one thousand eight hundred and sixty-four.

GEORGE A. EARNSHAW,
First Lieutenant Co. B, 138th Reg. Penn. Volunteers.
JACOB W. CRESS,
First Lieutenant and Adjutant 138th Reg. Penn. Volunteers.
GEORGE W. MULLEN,
Second Lieutenant Co. G, 138th Reg. Penn. Volunteers,
Judges of Election.

Attest:

WM. H. HOUGHTELIN,
Co. B, 138th Reg. Penn. Volunteers,
JACOB BUSHEY,
Co. G, 138th Reg. Penn. Volunteers,
Clerks.

No. 26.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, one thousand eight hundred and sixty-four, by the qualified electors of Adams county, State of Pennsylvania, in companies B and G of the 138th regiment of Pennsylvania volunteers, held at camp near Front Royal, Warren county, Virginia; Lieutenant George A. Earnshaw, company B, Lieutenant and Adjutant Jacob W. Cress, and Lieutenant George W. Mullen, company G, being duly elected as judges of said election, and Jacob Bushey, company G, and William H. Houghtelin, company B, being duly appointed clerks of said election, were severally sworn or affirmed as per certificates herewith returned.

No.	Names of voters.	Co.	County of	Borough or township.
1	Amos Starry	G	Adams	Huntington.
2	William A. Pitzer	G	do	Menallen.
3	Amos M. Detrick	B	do	Mount Pleasant.
4	Israel I. Miller	B	do	Hamiltonban.
5	Basil H. Norris	B	do	Straban.
6	John C. Schriver	G	do	Cumberland.
7	Winfield Cover	B	do	Hamiltonban.
8	John G. Scott	G	do	Franklin.
9	Charles P. K. Walter	G	do	Menallen.
10	Isaac E. Cook	G	do	Menallen.
11	David Slaybaugh	G	do	Menallen.
12	William F. Cline	G	do	Menallen.
13	William Heintzelman	B	do	Franklin.
14	Christian Byers	B	do	Highland.
15	George A. Earnshaw	B	do	Gettysburg.
16	William H. Houghtelin	B	do	Cumberland.
17	Henry C. Sadler	G	do	Tyrone.
18	John Miller	B	do	Hamiltonban.
19	Forrest Linah	G	do	Tyrone.
20	James McGrail	G	do	Menallen.
21	Emanuel G. Eppleman	G	do	Menallen.
22	George W. Routzong	G	do	Tyrone.
23	Henry G. Conrad	G	do	Tyrone.
24	Jacob W. Cress	Adj't	do	Straban.
25	Thomas Crouse	B	do	Freedom.
26	Ephraim Miller	B	do	Hamiltonban.
27	Isaac H. Moore	B	do	Liberty.
28	Elias Wreights	B	do	Germany.
29	George W. Mullen	G	do	Tyrone.
30	Jacob Bushey	G	do	Franklin.
31	John Orr	B	do	Highland.
32	John Bormuth	B	do	Gettysburg.
33	Jacob H. Beisecker	B	do	Franklin.

It is hereby certified that the number of electors for Adams county, Pennsylvania, voting at this election, amounts to thirty-three.

GEORGE A. EARNSHAW,
JACOB W. CRESS,
GEORGE W. MULLEN,
Judges of Election.

Attest :

WM. H. HOUGHTELIN,
JACOB BUSHEY,
Clerks.

Tally-list of companies B and G, 138th Pennsylvania volunteer infantry.

For Congress : William H. Koontz, 32 ; Alexander H. Coffroth, 1.

For assembly : David M. Myers, 31 ; James H. Marshall, 2.

For commissioner : John Day, 33 ; Abraham Krise, of P., 0.

For director of poor : Ephraim D. Newman, 31 ; John N. Graft, 2.

For auditors : Isaac N. Durboraw, (three years,) 32 ; Joseph Kepner, (two years,) 31 ; Joseph Burkee, (three years,) 1 ; Jacob Hull, (two years,) 2.

(Tickets enclosed.)

We, Lieutenant George A. Earnshaw, Jacob W. Cress, adjutant, and Lieutenant George W. Mullen, judges of this election, and William H. Houghtelin and Jacob Bushey, clerks thereof, do each severally swear that we will duly perform the duties of judges and clerks of said election, severally acting, as above set forth, according to law and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse, in conducting the same.

GEORGE A. EARNSHAW,

1st Lieut. Company B, 138th Pennsylvania Volunteers.

JACOB W. CRESS,

1st Lieut. and Adjutant, 138th Pennsylvania Volunteers.

GEORGE W. MULLEN,

2d Lieut. Company G, 138th Pennsylvania Volunteers.

WILLIAM H. HOUGHTELIN,

JACOB BUSHEY,

Clerks.

I hereby certify that George A. Earnshaw and George W. Mullen, judges, and William H. Houghtelin and Jacob Bushey, clerks, were, before proceeding to take any votes at said election, first duly sworn, as aforesaid.

Witness my hand this eleventh day of October, A. D. 1864.

JACOB W. CRESS, *Judge of Election.*

I certify that Jacob W. Cress, judge aforesaid, was also so sworn by me.

Witness my hand the date before written.

WILLIAM H. HOUGHTELIN, *Clerk.*

I do hereby certify that the foregoing is a true copy, taken from the original, in the office of the prothonotary of Adams county, Pennsylvania.

[SEALS]

JACOB BUSHEY, *Prothonotary.*

GETTYSBURG, *February* 17, 1865.

No. 27.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Adams and Franklin counties, State of Pennsylvania, being in actual military service under the requisition of the President of the United States, in company I of the 210th regiment of Pennsylvania volunteers, held at ———; Edward Reese, Charles W. King, and Joseph Kunkle being duly elected judges of the said election, and John C. Martin and Henry Mayer being duly appointed clerks of said election, being all severally sworn according to the certificates herewith returned.

Oaths of judges and clerks.

We, Edward Reese, Charles W. King, and Joseph Kunkle, judges of this election, and John C. Martin and Henry Mayer, clerks thereof, do each severally

swear that we will duly perform the duties of judges and clerks of the said election, severally acting as set forth in the act of the general assembly of Pennsylvania, entitled "An act to regulate elections by soldiers in actual military service," according to law and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse, in conducting the same.

EDWARD REESE,
CHARLES W. KING,
JOSEPH KUNKLE,
Judges.

JOHN C. MARTIN,
HENRY MAYER,
Clerks.

I hereby certify that the aforesaid Edward Reese, Charles W. King, and Joseph Kunkle, judges, and John C. Martin and Henry Mayer, clerks, were, before proceeding to take any votes at said election, first duly sworn, as aforesaid, by me.

Witness my hand this eleventh day of October, A. D. one thousand eight hundred and sixty-four.

Judge of said Election.

I certify that Edward Reese, judge of election aforesaid, was also duly so sworn, according to law, by me.

Witness my hand the date above written.

JOHN C. MARTIN,
Clerk of said Election.

We hereby certify that the aforesaid electors present, being more than ten, did select the aforesaid company headquarters of company I, 210th Pennsylvania volunteers, to be the place for opening a poll for the said election.

Witness our hands the day and year aforesaid.

EDWARD REESE,
CHARLES W. KING,
JOSEPH KUNKLE,
Judges of said Election.

Attest :

JOHN C. MARTIN,
HENRY MAYER,
Clerks.

Number and names of the electors voting at the said election, and their county, city, borough, township, ward, or precinct of residence :

Joseph Kunkle, Adams county, Franklin township ; Henry Mayer, Adams county, Germany township ; D. L. Michaels, Fulton county, Licking Creek township ; Charles J. Sefton, Adams county, Hamiltonban township ; Daniel Miller, Adams county, Liberty township ; Edward Reese, Adams county, Hamiltonban township ; Emory Hentzel, Adams county, Franklin township ; Charles Gilbert, Adams county, borough of Gettysburg ; Wilson E. Naylor, Adams county, Menallen township ; George Andrew, Adams county, Hamiltonban township ; Adam Frey, Adams county, Hamiltonban township ; Franklin Strausbaugh, Adams county, Hamiltonban township ; Jacob Houdeshell, Adams county, Hamiltonban township ; John Pervarel, Franklin county, Quincy township ; Samuel Robinson, Franklin county, Quincy township ; Francis McKenna, Franklin county, Chambersburg, south ward ; David C. Summers, Franklin county, Quincy township ; Daniel J. Hepfer, Franklin county, Quincy town-

ship; Patrick Gibnay, Adams county, Germany township; Martin L. Summers, Franklin county, Quincy township; George W. Knell, Franklin county, Quincy township; Richard B. Carson, Franklin county, Quincy township; Adam Histe, Franklin county, Quincy township; John Shank, Adams county, Freedom township; James B. Boyd, Adams county, Freedom township; Charles W. King, Adams county, Hamiltonban township; Henry Oyler, Franklin county, Quincy township; Adam Foutz, Adams county, borough of Gettysburg; John McPherson, Franklin county, Quincy township; Joseph Kint, Adams county, Hamiltonban township; Smith King, Franklin county, Quincy township; George W. Swauk, Franklin county, Quincy township; John Ogden, Adams county, Highland township; George A. Krise, Adams county, Liberty township; William A. Martin, Adams county, Liberty township; John C. Martin, Adams county, Liberty township; William F. Thompson, Bradford county, Towanda township; Peter E. Rosenberger, Franklin county, Guilford township; Peter J. Weaver, Columbia county, Fishing Creek township; Amos F. Savage, Columbia county, Fishing Creek township; Wilson Alberson, Columbia county, Fishing Creek township; Amos Chronister, Adams county, Huntingdon township; Anthony Wax, Perry county, Carroll township; Thompson Anderson, Adams county, Hamiltonban township; Sylvester Saylor, Adams county, Hamiltonban township; Jesse C. Tate, Columbia county, Bloom township; Edmund W. Meisenhelden, Adams county, Hamilton township; Ernst Eckert, Franklin county, north ward, Chambersburg; Peter Helfrich, Franklin county, north ward, Chambersburg; Perry J. Tate, Gettysburg; Joseph Macklay, Adams county, Hamiltonban township.

It is hereby certified by us that the above list of electors voting at the said election is correct, and that the number of electors of Adams and other counties, State of Pennsylvania, voting at said election, amounts to fifty-one.

Witness our hands the day and year aforesaid.

EDWARD REESE,
CHARLES W. KING,
JOSEPH KUNKLE,
Judges of the Election.

Attest :

J. C. MARTIN,
HENRY MAYER,
Clerks of the Election.

Tally-paper or list of votes for each person voted for at the said election by the qualified electors of Adams county, State of Pennsylvania.

For representative in the House of Representatives of the United States, William H. Koontz had nineteen votes; Alexander A. Coffroth had nine votes.

Franklin county, Pennsylvania, men voting at these polls :

For Congress, Alexander A. Coffroth had nine votes; William H. Koontz had eight votes.

By electors of Columbia county, Pennsylvania :

For Congress, Colonel Victore E. Rollet had three votes.

For assembly, William H. Jacoby had four votes.

For sheriff, Samuel Snyder had three votes.

For commissioner, Allen Mann had three votes.

For auditor, Daniel Snyder had two votes.

Bradford county, Pennsylvania, by the electors company I, 210th Pennsylvania volunteers :

For Congress, Ulysses Mercer had one vote.

Adams county :

For representative in the house of representatives of Pennsylvania, David M. Myers had seventeen votes ; James H. Marshall had eleven votes.

Votes by the qualified voters of Franklin county, Pennsylvania :

For representative, J. McDowel Sharpe had nine votes ; William S. Mitchell had nine votes ; Alexander K. McClure had seven votes ; Samuel Roath had seven votes.

Bradford county, Pennsylvania :

For representative in the house of representatives of Pennsylvania, Joseph H. Marsh had one vote ; Lorenzo Grinnell had one vote.

For commissioner, John Beardsley had one vote.

For auditor, Robert Mason had one vote.

For the senate of Pennsylvania, by Perry county, Pennsylvania, Kirk Haines had one vote ; Lewis W. Hall had one vote.

For assembly, Samuel Roath had one vote ; Alexander K. McClure had one vote.

For associate judge, Jacob Shively had one vote.

For prothonotary, Robert Brannon had one vote.

For coroner, Henry P. Lightner had one vote.

For director of poor, John Soule had one vote.

For coroner, William Hays had one vote.

For auditor, William Kipp had one vote.

Votes of Franklin county, Pennsylvania :

For commissioner, John Armstrong had nine votes.

For director of poor, David J. Skinner had nine votes.

For auditor, Montgomery Martin had nine votes.

For president judge, Francis M. Kimmel had nine votes.

For commissioner, Hugh B. Davidson had seven votes.

For director of poor, John H. Criswell had seven votes.

For auditor, Morrow B. Skinner had seven votes.

For president judge, Alexander King had eight votes.

For Franklin county, Pennsylvania :

For coroner, Victor D. Miller had nine votes ; Hiram E. Wertz had seven votes.

For county commissioner of Adams county, Pennsylvania, John Day had nineteen votes ; Abraham Krise had nine votes.

For director of the poor, Ephraim D. Newman, had nineteen votes ; John N. Graft had nine votes.

For county auditor, Isaac N. Durboraw had nineteen votes ; Joseph Kepner had nineteen votes ; Joseph Burkee had nine votes ; Jacob Hall had nine votes.

We hereby certify that the aforesaid tally-paper and list of votes is correct. Witness our hands the day and year aforesaid.

JOHN C. MARTIN,

HENRY MAYER,

Clerks.

Return of the election.

At an election held by the electors of Adams county in company I of the 210th regiment of Pennsylvania soldiers, at or near Weldon railroad, camp headquarters, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, there were cast twenty-eight votes for representative in the House of Representatives in the Congress of the United States, of which William H. Koontz had nineteen votes ; Alexander A. Coffroth had nine votes.

For representative in the house of representatives of Pennsylvania, there were cast twenty-eight votes, of which David M. Myers had seventeen votes ; James H. Marshall had eleven votes.

For the office of county commissioner there were cast twenty-eight votes, of which John Day had nineteen votes; Abraham Krise had nine votes.

For the office of director of the poor there were cast twenty-eight votes, of which Ephraim D. Newman had nineteen votes; John N. Graft had nine votes.

For the office of county auditor there were cast twenty-eight votes, of which Joseph Kepner had nineteen votes; Isaac N. Durboraw had nineteen votes; Joseph Burkee had nine votes; Jacob Hall had nine votes.

A true return of the election held as aforesaid on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, certified by us the day and year aforesaid—Company I, 210th regiment Pennsylvania soldiers.

EDWARD REESE,
CHARLES W. KING,
JOSEPH KUNKLE,
Judges of the said Election.

Attest:

J. C. MARTIN,
HENRY MAYER,
Clerks.

I do hereby certify that the foregoing is a true copy of the original in the office of the prothonotary of Adams county, Pennsylvania.

JACOB BUSHEY, *Prothonotary.*

GETTYSBURG, *February 17, 1865.*

No. 28.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Franklin, Adams, and York counties, State of Pennsylvania, being in actual military service under the requisition of the President of the United States, in company B, of the 21st regiment of Pennsylvania volunteers, cavalry, held at camp near City Point, Quartermaster Sergeant William W. Crooks and Lieutenant J. Q. A. Young, and Lafayette Brenizer, orderly sergeant, being duly elected judges of the said election, and J. Lewis McClellan and David M. Young being duly appointed clerks of said election, being all severally sworn or affirmed according to the certificates herewith returned.

Oaths of the judges and clerks.

We, William W. Crooks, J. Q. A. Young, and Lafayette Brenizer, judges of this election, and J. Lewis McClellan and David M. Young, clerks thereof, do each severally affirm that we will duly perform the duties of judges and clerks of the said election, severally acting as set forth in the act of the general assembly of Pennsylvania, entitled "An act to regulate elections by soldiers in actual military service," according to law, and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same.

WILLIAM W. CROOKS,
LAFAYETTE BRENIZER,
JOHN Q. A. YOUNG,
Judges.

J. LEWIS MCCLELLAN,
DAVID M. YOUNG,
Clerks.

I hereby certify that the aforesaid William W. Crooks, J. Q. A. Young, and Lafayette Brenizer, judges, and J. Lewis McClellan and David M. Young, clerks, were, before proceeding to take any votes at said election, first duly affirmed as aforesaid by me.

JAMES MICKLEY,
Captain Company B, 21st Pennsylvania Cavalry.

Witness my hand this eleventh day of October, A. D. one thousand eight hundred and sixty-four.

Judge of said Election.

I certify that _____, judge of election aforesaid, was also duly so _____, according to law, by me.

Witness my hand the date above written.

Clerk of said Election.

We hereby certify that the aforesaid electors present, being more than ten, did select the aforesaid _____ to be the place for opening a poll for the said election.

Witness our hands the day and year aforesaid.

WILLIAM W. CROOKS,
LAFAYETTE BRENIER,
J. Q. A. YOUNG,
Judges of said Election.

Attest:

J. LEWIS MCCLELLAN,
DAVID M. YOUNG,
Clerks.

Names of the electors voting at the said election, and their counties and townships.

Captain James Mickley, Adams county, Franklin township; Abraham Stockslager, Adams county, Franklin township; Lieutenant Isaac Bucher, Adams county, Franklin township; James M. Heintzelman, Adams county, Franklin township; Witherow D. Horner, Adams county, Mount Joy township; Charles F. Hoffman, Adams county, Hamiltonban township; Jacob Fritz, Adams county, Franklin township; Levi J. Hart, Adams county, Gettysburg township; Jacob Comfort, Adams county, Menallen township; George F. Seitz, Adams county, Freedom township; Herbert Boyce, Adams county, Freedom township; David Showalter, Adams county, Franklin township; Philip A. Snyder, Adams county, Straban township; William A. Johnson, Franklin county, Washington township; Jacob Eyer, Franklin county, Letterkenney township; David Fried, Adams county, Franklin township; Samuel Shell, Adams county, Straban township; A. J. Ripple, Franklin county, Washington township; Walter J. Beamer, Adams county, Cumberland township; John W. Guinn, Adams county, Cumberland township; Thomas J. Lott, Adams county, Cumberland township; Noah Snyder, Adams county, Mount Joy township; G. Washington Spertzel, Adams county, Huntington township; Samuel P. Glass, Adams county, Huntington township; G. Jacob Hankey, Adams county, Mount Joy township; James Hake, Adams county, Cumberland township; Isaac Fritz, Adams county, Franklin township; Conrad B. Walter, Adams county, Franklin township; Adam Snyder, Adams county, Cumberland township; Joseph Kuhn, Adams county, Franklin township; John Herring, Adams county, Freedom township; Aaron Fried, Adams county, Franklin township; William H. Dixon, Adams county, Hamiltonban township; Elisha P. Hutton, Adams county, Menallen

township; George Sell, Adams county, Hamiltonban township; J. Lewis McClellan, Adams county, Gettysburg township; William W. Crooks, Franklin county, Green township; George W. Keefauver, Adams county, Cumberland township; John Baldwin, Adams county, Hamiltonban township; Lafayette Brenizer, Adams county, Butler township; John Q. A. Young, York county, Shrewsbury township; David M. Young, Adams county, Cumberland township; Lewis Miller, Adams county, Berwick township; Nicholas Bersicker, Adams county, Freedom township.

It is hereby certified by us that the above list of electors voting at the said election is correct, and that the number of electors of ——— county, State of Pennsylvania, voting at the said election, amounts to .

Witness our hands the day and year aforesaid.

_____,
_____,

Judges of the Election.

Attest:

_____,

Clerks of the Election.

(Tickets enclosed.)

Tally-paper or list of votes for each person voted for at the said election by the qualified voters of ——— county, State of Pennsylvania.

For representative in the House of Representatives of the United States, William H. Koontz had thirty-six votes; A. H. Coffroth had four votes; Joseph Bailey had one vote.

For representative in the house of representatives of Pennsylvania, David M. Myers had twenty-nine votes; James H. Marshall had ten votes; Alexander R. McClure had three votes; Samuel Roath had three votes; George W. Reichenbach had one vote; Abner S. Binder had one vote; J. McDowel Sharpe had one vote; William Mitchell had one vote.

For president judge, Francis M. Kimmell, of Franklin county, had one vote; Alexander King, of Franklin county, had three votes.

For coroner, Hiram E. Wertz, of Franklin county, had three votes; Victor D. Miller, of Franklin county, had one vote.

For county commissioner, John Armstrong, of Franklin county, had one vote; John Day, of Adams county, had thirty votes; Abraham Krise, of P., Adams county, had six votes; Hugh B. Davidson, of Franklin county, had three votes; Thomas Burns, of York county, had one vote.

For director of the poor, David J. Skinner, of Franklin, had one vote; Ephraim D. Newman, of Adams county, had twenty-nine votes; John N. Graft, of Adams county, had nine votes; John H. Criswell, of Franklin county, had three votes; John Elcock, of York county, had one vote.

For county auditor, Isaac N. Durboraw, (three years,) of Adams county, had thirty votes; Joseph Kepner, (two years,) of Adams county, had thirty votes; Joseph Burkee, (three years,) of Adams county, had nine votes; Jacob Hull, (two years,) of Adams county, had nine votes; Morrow R. Skinner, of Franklin county, had three votes; Jonas Smith, of York county, had one vote; Montgomery Martin, of Franklin county, had one vote.

We hereby certify that the aforesaid tally-paper and list of votes is correct.

Witness our hands, the day and year aforesaid.

J. LEWIS McCLELLAN,
DAVID M. YOUNG,
Clerks.

Return of the election.

At an election held by the electors of Adams, Franklin, and York counties, in company B of the 21st cavalry regiment of Pennsylvania soldiers, at or near City Point, Virginia, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, there were cast forty-four votes.

For representative in the House of Representatives in the Congress of the United States ——— votes, of which William H. Koontz had thirty-six votes; A. H. Coffroth had four votes; Joseph Bailey, fifteenth congressional district, had one vote.

For representative in the house of representatives of Pennsylvania there were cast ——— votes, of which David M. Myers, of Adams county, had twenty-nine votes; James H. Marshall, of Adams county, had ten votes; Alexander K. McClure, of Franklin county, had three votes; Samuel Roath, of Franklin county, had three votes; George W. Reichenbach, of York county, had one vote; Abner S. Binder, of York county, had one vote; J. McDowel Sharpe, of Franklin county, had one vote; William Mitchell, of Franklin county, had one vote.

For president judge, Francis M. Kimmel, of Franklin county, had one vote; Alexander King, of Franklin county, had three votes.

For the office of coroner there were cast ——— votes, of which Hiram E. Wertz, of Franklin county, had three votes; Victor D. Miller, of Franklin county, had one vote.

For the office of county commissioner there were cast ——— votes, of which John Day, of Adams county, had thirty votes; Abraham Krise, of P., Adams county, had six votes; John Armstrong, of Franklin county, had one vote; Hugh H. Davidson, of Franklin county, had three votes; Thomas Burns, of York county, had one vote.

For the office of director of the poor there were cast ——— votes, of which Ephraim D. Newman, of Adams county, had twenty-nine votes; John N. Graft, of Adams county, had nine votes; John H. Criswell, of Franklin county, had three votes; David J. Skinner, of Franklin county, had one vote; John Elcock, of York county, had one vote.

For the office of county auditor there were cast ——— votes, of which Isaac N. Durboraw, (three years,) of Adams county, had thirty votes; Joseph Kepner, (two years,) of Adams county, had thirty votes; Joseph Burkee, (three years,) of Adams county, had nine votes; Jacob Hull, (two years,) of Adams county, had nine votes; Morrow R. Skinner, of Franklin county, had three votes; Montgomery Martin, of Franklin county, had one vote; Jonas Smith, of York county, had one vote.

A true return of the election held as aforesaid on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four: certified by us the day and year aforesaid.

Company Sergeant WILLIAM W. CROOKS,

Co. B, 21st Reg't Pa. Vol. Cav. Sol.,

Lieutenant JOHN Q. A. YOUNG,

Co. B, 21st Reg't Pa. Vol. Cav. Sol.,

Orderly Sergeant LAFAYETTE BRENIZER,

Co. B, 21st Reg't Pa. Vol. Cav. Sol.,

Judges of the said Election.

Attest:

J. LOUIS McCLELLAN,
DAVID M. YOUNG,

Clerks.

I do hereby certify that the foregoing is a true copy taken from the original in the office of the prothonotary of Adams county, Pennsylvania.

JACOB BUSKEY, *Prothonotary.*

GETTYSBURG, *February 17, 1865.*

No. 29.

A statement showing the returns of soldiers' votes in Fulton county for the year 1864, with the vote cast for each candidate for Congress, included in the computation of the vote by the board of return judges of said county.

Company and regiment.	Place of voting.	Vote for W. H. Koontz.	Vote for A. H. Coffroth.
Detachment of signal corps.....	Camp at Greencastle.....	1	.....
(Not given in return).....	Camp Biddle, Pa.....	2	.....
	United States Army hospital, Philadel- phia.....	1	.....
	Hospital, York, Pa.....	1	.....
	Camp Parole, Annapolis, Md.....	1	.....
Company E, 84th regiment.....	Fort Blass, Va.....	.....	1
Detachment of 186th Pa. vols.....	Camp at Philadelphia.....	1	.....
Company E, 49th regiment.....	Camp near Winchester.....	2	.....
	Remount camp, Martinsburg, W. Va....	5	2
Company K, 202d reg. Pa vols....	Thoroughfare Gap, Va.....	4	.....
Company D, 209th Pa. vols.....	Bermuda Hundred, Va.....	2	.....
	Turner's Lane, United States General Hospital, Philadelphia.....	1	.....
Company B, 148th reg. Pa. vols...	Fort Steadman, Va.....	.....	1
	No. 374, H street, Washington city, D. C.	1	.....

FULTON COUNTY, ss:

I, John A. Robinson, prothonotary of the court of common pleas in and for the county aforesaid, in the State of Pennsylvania, do hereby certify that the statement hereto attached shows the number of soldiers' votes included in the computation of the return judges of said county, together with the number of votes cast for each candidate for Congress in the sixteenth congressional district of Pennsylvania at the election held on the second Tuesday of October, A. D. 1864; also the name of the company and regiment (where the same are given in the return made and filed in this office) and the place of holding the several elections, returns whereof are made and included as aforesaid, as the same remains on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at McConnellsburg, the 4th day of January, A. D. 1866.

[SEAL.]

JNO. A. ROBINSON,

Prothonotary.

No. 30.

FOLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Adams county, State of Pennsylvania, being in actual military service under the requisition of the President of the United States, in company K, of the 184th regiment of Pennsylvania volunteers, held at the headquarters of company K, 184th regiment Pennsylvania volunteers, William H. Coe, Jesse Diehl, and Daniel Minter being duly elected judges of the said election, and Manoah Carbaugh and Jacob W. Fidler being duly appointed clerks of said election, being all severally sworn according to the certificates herewith returned.

Oaths of the judges and clerks.

We, William H. Coe, Jesse Diehl, and Daniel Minter, judges of this election, and Manoah Carbaugh and Jacob W. Fidler, clerks thereof, do each severally swear that we will duly perform the duties of judges and clerks of the said election, severally acting as set forth in the act of the general assembly of Pennsylvania entitled "An act to regulate elections by soldiers in actual military service," according to law and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same.

DANIEL MINTER,
WILLIAM H. COE,
JESSE DIEHL,

Judges.

MANOAH CARBAUGH,
JACOB W. FIDLER,

Clerks.

I hereby certify that the aforesaid William H. Coe, Jesse Diehl, and Daniel Minter, judges, and Manoah Carbaugh and Jacob W. Fidler, clerks, were, before proceeding to take any votes at said election, first duly sworn, as aforesaid, by me, Daniel Minter.

Witness my hand, this eleventh day of October, A. D. one thousand eight hundred and sixty four.

DANIEL MINTER,
Judge of said Election.

I certify that said judge of election, aforesaid, was also duly so sworn, according to law, by me.

Witness my hand, the date above written.

MANOAH CARBAUGH,
Clerk of said Election.

We hereby certify that the aforesaid electors present, being more than ten, did select the aforesaid headquarters of company K, 184th regiment Pennsylvania volunteers, to be the place for opening a poll for the said election.

Witness our hands, the day and year aforesaid.

WILLIAM H. COE,
JESSE DIEHL,
DANIEL MINTER,
Judges of said Election.

Attest:

MANOAH CARBAUGH,
JACOB W. FIDLER,
Clerks.

Names of the electors voting at the said election, and their counties and townships.

William H. Coe, Adams county, Franklin township; Jesse Diehl, Adams county, Mount Pleasant township; Daniel Minter, Adams county, Mount Pleasant township; Jacob W. Fidler, Adams county, Straban township; Manoah Carbaugh, Adams county, Hamiltonban township; Captain William H. Adams, Adams county, Franklin towuship; Singleton M. Stevens, Adams county, Tyrone township; George Shultze, Adams county, Franklin township; Jeremiah Gulden, Adams county, Straban township; John E. Hartman, Adams county, Franklin township; Leander J. Bower, Adams county, Tyrone township;

Lenard Taylor, Adams county, Menallen township; Samuel Lawver, Adams county, Butler township; John Z. Hartzell, Adams county, Straban township; Abraham Keckler, Adams county, Butler township; Samuel A. Cooley, Adams county, Tyrone township; John H. Major, Adams county, Straban township; Henry Tate, Adams county, Straban township; David Wisler, Adams county, Franklin township; Joseph Lease, jr., Adams county, Straban township; Ephraim Shull, Adams county, Straban township; Lewis C. Smith, Adams county, Menallen township; Peter G. Cassatt, Adams county, Straban township; Michael Orner, Adams county, Menallen township; John A. Sillik, Adams county, Menallen township; John Toot, Adams county, Franklin township; Jacob McIlhenny, Adams county, Straban township; David Tate, Adams county, Straban township; Boreas Deatrick, Adams county, Straban township; John W. Fidler, Adams county, Straban township; Lieutenant Philip L. Houck, Adams county, Butler township; Amos H. Lady, Adams county, Franklin township; John H. Eckert, Adams county, Straban township; Martin Sheeler, Adams county, Straban township; John A. Snowden, Adams county, Straban township; Henry M. Swartz, Adams county, Cumberland township; Jacob Rummell, Adams county, Straban township; George T. Hudson, Adams county, Straban township; Ephraim A. Loubaugh, Adams county, Straban township; John C. Steinberger, Adams county, Franklin township; George Starner, Adams county, Franklin township; Samuel A. Bigham, Adams county, Hamiltonban township; Levi Rinehart, Adams county, Straban township; Emanuel H. Trastle, Adams county, Tyrone township; Joshua Taylor, Adams county, Menallen township; Henry Peters, Adams county, Franklin township; Lewis F. Brady, Adams county, Franklin township; John W. Strausbaugh, Adams county, Franklin township; James Bigham, Franklin county, Washington township; Henry Slothour, Adams county, Straban township; Joseph Bigham, Adams county, Hamiltonban township; Ephraim Rinehart, Adams county, Straban township; George H. Fant, Adams county, Menallen township; Jacob H. Bott, Adams county, Cumberland township; Noah Lott, Adams county, Cumberland township; Adam B. Black, Adams county, Straban township; Abraham Kunkle, Adams county, Straban township; William Shelleman, Adams county, Franklin township; William Funk, Adams county, Tyrone township; John Shultz, Adams county, Franklin township.

(Tickets enclosed.)

It is hereby certified by us that the above list of electors voting at the said election is correct, and that the number of electors of Adams county, State of Pennsylvania, voting at the said election, amounts to sixty votes.

Witness our hands the day and year aforesaid.

WILLIAM H. COE,
JESSE DIEHL,
DANIEL MINTER,
Judges of the Election.

Attest :

MANOAH CARBAUGH,
JACOB W. FIDLER,
Clerks of the Election.

Tally-paper or list of votes for each person voted for at the said election by the qualified voters of Adams county, State of Pennsylvania.

For representative in the House of Representatives of the United States, Alexander H. Coffroth had twenty-one votes; William H. Koontz had thirty-nine votes.

For representative in the house of representatives of Pennsylvania, James H. Marshall had nineteen votes; David M. Myers had thirty-nine votes.

For county commissioner, Abraham Krise, of P., had twenty-one votes ; John Day had thirty-eight votes.

For director of the poor, John N. Graft had twenty-one votes ; Ephraim D. Newman thirty-eight votes.

For county auditor, Joseph Burkee (three years) had twenty-one votes ; Jacob Hull (two years) had twenty-one votes ; Isaac N. Durboraw (three years) had thirty-eight votes ; Joseph Kepner (two years) had thirty-eight votes.

We hereby certify that the aforesaid tally-paper and list of votes is correct.

Witness our hands the day and year aforesaid,

MANOAH CARBAUGH,
JACOB W. FIDLER,

Clerks.

Return of the election.

At an election held by the electors of Adams county, in company K of the 148th regiment of Pennsylvania soldiers, at the headquarters of company K, 184th regiment Pennsylvania volunteers, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, there were cast—

For representative in the House of Representatives in the Congress of the United States, ——— votes, of which Alexander H. Coffroth had twenty-one votes ; William H. Koontz had thirty-nine votes.

For representatives in the house of representatives of Pennsylvania, there were cast ——— votes, of which James H. Marshall had nineteen votes ; David M. Myers had thirty-nine votes.

For the office of county commissioner, there were cast ——— votes, of which Abraham Krise, of P., had twenty-one votes ; John Day had thirty-eight votes.

For the office of director of the poor, there were cast ——— votes, of which John N. Graft had twenty-one votes ; Ephraim D. Newman had thirty-eight votes.

For the office of county auditor, there were cast ——— votes, of which Joseph Burkee (three years) had twenty-one votes ; Jacob Hull (two years) had twenty-one votes ; Isaac N. Durboraw (three years) had thirty-eight votes ; Joseph Kepner (two years) had thirty-eight votes.

A true return of the election held, as aforesaid, on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four, certified by us the day and year aforesaid.

WILLIAM H. COE,
Co. K, 184th Reg't Penn. Soldiers,
JESSE DIEHL,
Co. K, 184th Reg't Penn. Soldiers,
DANIEL MINTER,
Co. K, 184th Reg't Penn. Soldiers,
Judges of said Election.

Attest :

MANOAH CARBAUGH,
JACOB W. FIDLER,

Clerks.

I do hereby certify that the foregoing is a true copy, taken from the original in the office of the prothonotary of Adams county, Pennsylvania.

JACOB BUSHEY,
Prothonotary.

GETTYSBURG, *February 17, 1865.*

No. 31.

POLL-BOOK OF THE ELECTION

Held on the second Tuesday of October, in the year one thousand eight hundred and sixty-four, by the qualified electors of Fulton county, State of Pennsylvania, being in actual military service under the requisition of the President of the United States, in company — of the — regiment of Pennsylvania —, held at Barracks No. 1, Soldiers' Rest, Washington, D. C.; David Bollman, William Brallier, and John H. Akers being duly elected judges of the said election, and severally affirmed according to the certificates herewith returned.

Oaths of the judges and clerks.

We, David Bollman, William Brallier, and John H. Akers, judges of this election, and Barton A. Cooper and Josiah H. Anderson, clerks thereof, do severally affirm that we will duly perform the duties of judges and clerks of the said election, severally acting as set forth in the act of the general assembly of Pennsylvania entitled "An act to regulate elections by soldiers in actual military service," according to law and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same.

DAVID BOLLMAN,
WILLIAM BRALLIER,
JOHN H. AKERS,
Judges.

JOSIAH H. ANDERSON,
BARTON A. COOPER,
Clerks.

I hereby certify that the aforesaid David Bollman, William Brallier, and John H. Akers, judges, and Josiah H. Anderson, clerk, were, before proceeding to take any votes at said election, first duly affirmed as aforesaid by me.

Witness my hand this eleventh day of October, A. D. one thousand eight hundred and sixty-four.

BARTON A. COOPER,
Clerk of said Election.

I certify that Barton A. Cooper, judge of election aforesaid, was also duly so affirmed according to law by me.

DAVID BOLLMAN,
Judge of said Election.

We hereby certify that the aforesaid electors present, being more than ten, did select the aforesaid — to be the place for opening a poll for the said election.

Witness our hands the day and year aforesaid.

DAVID BOLLMAN,
WILLIAM BRALLIER,
JOHN H. AKERS,

Judges of said Election.

Attest :

BARTON A. COOPER,
JOSIAH H. ANDERSON,
Clerks.

Names of the electors voting at said election, and their counties and townships.

A Lee, Fulton county, Taylor township; M. Laman, Fulton county, Ayr township; W. Woodcock, Fulton county, Wells township; J. T. Conley, Ful-

ton county, Todd township; J. C. Straley, Fulton county, Ayr township; G. S. Newman, Fulton county, Taylor township; J. H. Lamberton, Fulton county, Taylor township; Saul Unger, Fulton county, Ayr township; J. H. Leidig, Fulton county, Taylor township; J. Unger, Fulton county, Ayr township; J. Etemiller, Fulton county, McConnellsburg borough; J. W. McClure, Fulton county, McConnellsburg borough; David Lynch, Fulton county, Belfast township; J. Richards, Fulton county, Ayr township; S. F. Orr, Fulton county, Ayr township; George Marshall, Fulton county, Dublin township; J. Fox, Fulton county, Ayr township; Theodore Hambert, Fulton county, Ayr township; C. Fulton, Fulton county, Ayr township; J. R. Fox, Fulton county, Ayr township; A. Slaim, Fulton county, Ayr township; James Miller, Fulton county, Ayr township; Wriley Colter, Fulton county, Lebanon township; Samuel Baker, Fulton county, Dublin township; George Bishop, Fulton county, Bethel township; Levi Covalt, Fulton county, Thomas township; Dan. Grinnells, Fulton county, Thomas township; George Breckall, Fulton county, Thomas township; Dean Smith, Fulton county, Bethel township; William Miller, Fulton county, Taylor township; David Heifner, Fulton county, Taylor township; G. W. F. Woodcock, Fulton county, Taylor township; Urisan Prosser, Fulton county, McConnellsburg borough; J. Wittee, Fulton county, Taylor township; G. W. Anderson, Fulton county, Taylor township; J. Straight, Fulton county, Licking Creek township; J. H. Akers, Fulton county, Brush Creek township.

It is hereby certified by us that the above list of electors voting at the said election is correct, and that the number of electors of ——— county, State of Pennsylvania, voting at the said election amounts to thirty-seven.

Witness our hands the day and year aforesaid.

D. BOLLMAN,
WM. BRALLIER,
J. H. AKERS,
Judges of the Election.

Attest:

J. H. ANDERSON,
B. A. COOPER,
Clerks of the Election.

Tally-paper or list of votes for each person voted for at the said election by the qualified voters of ——— county, State of Pennsylvania.

For representative in the House of Representatives of the United States, For commissioners, D. A. Lyon had 10 votes; G. W. Leighty had 16 votes. For treasurer, Alex. Maine had 10 votes; D. R. Dunlap had 17 votes. For auditor, John Charlton had 10 votes; A. J. Fore had 16 votes. For district attorney, J. N. Sypes had 17 votes. For coroner, Jacob Muma had 16 votes.

We hereby certify that the aforesaid tally-paper and list of votes is correct. Witness our hands the day and year aforesaid.

J. H. ANDERSON,
B. A. COOPER,
Clerks.

A true return of the election held as aforesaid on the second Tuesday of October, A. D. one thousand eight hundred and sixty-four.

Certified by us the day and year aforesaid.

D. BOLLMAN,
WM. BRALLIER,
J. H. AKERS,
Judges of the said Election.

Attest:

J. H. ANDERSON, }
B. A. COOPER, } *Clerks.*

PENNSYLVANIA, ss :

I do hereby certify that the foregoing is a correct copy of said election return, so far as the same relates to the county of Fulton.

In witness whereof I have hereunto set my hand and caused the seal of said office to be affixed, this twenty-sixth day of October, A. D. one thousand eight hundred and sixty-four.

[L. S.]

W. H. ARMSTRONG,
Deputy Secretary of the Commonwealth.

BEDFORD COUNTY, ss :

I, O. E. Shannon, prothonotary of said county, certify that the foregoing is a full and true copy of a poll-book (except the printed form and blank) or copy of poll-book certified by the secretary of the Commonwealth, and received in my office.

Witness my hand and official seal, at Bedford, the 27th day of January, A. D. 1865.

[L. S.]

O. E. SHANNON, *Prothonotary.*

No. 32.

Opinion of the attorney general, defining the power of the governor in the premises.

Two papers, purporting to be returns of the recent election in the sixteenth congressional district, have been sent to the secretary of the Commonwealth. The district is composed of the five counties of Adams, Franklin, Fulton, Bedford, and Somerset. One of these papers is signed by four persons, viz : Messrs. Mann, of Bedford county; Laker, of Franklin; Winter, of Fulton; and Diehl, of Adams, styling themselves a majority of the return judges elected by the several boards of the return judges of the above-named counties; and the paper goes on to state that they examined and counted the votes cast for Congress in the district, and that Messrs. Coffroth and Koontz had each a specified number of votes in the respective counties of Adams, Bedford, Franklin, and Fulton, and that Mr. Coffroth, having a majority of all the votes cast as counted before the board, is declared duly and legally elected. It is further stated in the paper that Somerset was not represented by a judge, or otherwise, in the board, and that notice of the time and place of meeting was given to the return judge elected from Somerset, who was in the borough of Chambersburg (where the meeting was held) on the day of meeting.

The other paper is signed by five persons, viz : Messrs. Will, of Somerset county; Cart, of Adams; Wilhelm, of Franklin; Winter, of Fulton; and Peck, of Bedford, styling themselves as being appointed return judges of the election held in the several counties composing the sixteenth congressional district, viz : Adams, Bedford, Franklin, Fulton, and Somerset. The paper goes on to state that having carefully examined the returns of the said several districts, and added together the votes therein contained, according to law, they certify that Messrs. Koontz and Coffroth had each a specified number of votes in the respective counties of Adams, Bedford, Franklin, Fulton, and Somerset, and declare that Mr. Koontz, having received the greatest number of legal votes, is duly elected. Both the bodies claiming to be district return judges met on the day and at the place fixed by law.

The respective candidates having requested a hearing, were heard by them-

selves and counsel, and evidence was received on the question, Who were the return judges of the district? This evidence left no material question of fact in doubt, and the result may be briefly stated thus: Mr. Wills was the regularly selected district return judge for Somerset, and Mr. Winter for Fulton. All the signers of the respective papers were among the county return judges of their respective counties. Messrs. Diehl, of Adams, and Mann, of Bedford, were selected as district return judges by the majority of the return judges of their respective counties after the minority had withdrawn in consequence of dissatisfaction with the proceedings of the majority. Messrs. Cart, of Adams, and Peck, of Bedford, were selected as district return judges by the minority of the return judges of their respective counties after the withdrawal above stated. Mr. Wilhelm, of Franklin, was selected as district return judge by the return judges of that county at their first meeting, and, of course, before the soldiers' vote had been counted. Mr. Laker, of the same county, was selected by the return judges of the county at their last meeting, and after the soldiers' vote had been counted. At that meeting, upon the suggestion of one of the clerks, Mr. Wilhelm, who was president of the board, stated that he had been informed that the selection of a district return judge, before all the votes had been counted, was illegal, upon which a motion was made and carried to proceed to a selection. The vote was taken and Mr. Laker had a majority, and the returns were accordingly placed in his charge. Mr. Wilhelm was nominated, but had not a majority. He never resigned the appointment which had already been made, but, no doubt, under the impression that such appointment was illegal, he put the question on proceeding to a new selection, announced the result, and as president signed a certificate, under seal, of Mr. Laker's selection as district return judge.

On this state of facts the governor has requested my opinion on the question, Which of the two candidates ought to be proclaimed by him as having been returned as elected?

In a recent opinion I have stated my reasons, which need not be here recapitulated, for arriving at the conclusion that the governor has no right to go behind the returns for the purpose of inquiring into their correctness—that his functions in regard to them are strictly ministerial.

In the present instance it happens (it is believed for the first time) that two different bodies of men, each claiming to be the board of district return judges, present papers which they style returns of the election. The governor is, of course, compelled to endeavor to ascertain, by such evidence as can be had, which of these papers is signed by the lawful district return judges, just as every ministerial officer is bound to satisfy himself of the authenticity of an official paper on which he is required to act.

It is well established that (unless otherwise expressly provided) an authority of a public nature, conferred on three or more persons jointly, may be executed by a majority at a meeting lawfully held, and of which all have had legal notice, and that the meeting and proceedings of such a body are presumed to be regular in the absence of proof to the contrary. But a minority of such a body cannot, by withdrawing (for whatever reason) from the majority and proceeding to act independently, vest in themselves the authority which the law has conferred on the whole, and permits to be exercised by a majority as above stated.

The general election law of 1839 provides that when two or more counties shall compose a district for the choice of a member of Congress, the judges of the election in each county having met, the clerks shall make out a fair statement of all the votes which shall have been given at such election, which shall be signed by said judges and attested by the clerks, and that one of the said judges shall take charge of such certificate, and shall produce the same at a meeting of one judge from each county.

Keeping in view the principles above stated, which are of universal acceptance, the minorities of the judges in Adams and Bedford had plainly no authority

to appoint clerks or cause votes to be added up, or returns to be made out, or, in fine, to perform any of the functions of the body of county judges of the election. The conclusion is inevitable that Messrs. Cart, of Adams, and Peck, of Bedford, who claimed to act as judges from these counties at the meeting of one judge from each county, and present returns made and signed by such minorities, were not entitled so to act, nor could the returns which they presented be legally received.

The law, as has been seen, requires that the certificate, having been made out by the clerks, shall be signed by the county judges of the election. It is, of course, in the possession and under the control of the body of such judges when assembled according to law. Of course that body must direct it to be placed in the charge of the member whom a majority may designate to attend the meeting of one judge from each county, and present it to that meeting, and assist in making up the returns of the district. I can see no ground for the assumption that a judge cannot be designated for these purposes just as lawfully before the certificate has been made out and signed as afterwards; and therefore I conceive that the selection of Mr. Wilhelm was entirely legal. But that selection did not constitute him the holder of an office. He was rather a committee of one, to perform certain duties. But, whether he be styled an officer or a committee, in my opinion the subsequent selection of Mr. Laker, and the actual placing of the certificate in his charge, completely discharged Mr. Wilhelm and over-rode his appointment.

The result is, that of the five persons who have signed the papers stating Mr. Koontz to be elected, three had no legal authority to act in the capacity which they assumed, and I am therefore of opinion that the governor ought not to base his proclamation on that paper as a return.

In regard to the other paper, it is signed by four persons who appear to have been legally designated by the judges of election in their respective counties. The judge from Somerset, though he had notice, neglected or refused to attend the meeting, or, at any rate, failed to attend it. The duty of the four judges who did attend is clearly pointed out by law. It was to "cast up the several county returns and make duplicate returns of *all* the votes given" for the office in the district, "and of the name of the person elected." Instead of doing this, they omitted to count the vote of Somerset, apparently by reason of the non-attendance of the judge from that county. It has been suggested that as they had not those returns they could not count them, which is very true. But duplicate originals were accessible in the office of the prothonotary of Somerset county, and it was their duty, if necessary, to refer to them. They could not, of course, have obtained them on the same day; but though the law fixes the day of their meeting, it was perfectly legal for them to adjourn, if the business could not be completed in one day, and I think it was undoubtedly their duty to do so. That the non-attendance of a judge should be held to infer the disfranchisement of the county from which he comes, when duplicate originals of the returns which he failed to produce were easily attainable by a short delay, would be intolerable.

The act of 1839 provides that the judges shall make returns of "all the votes given for such office in said district, and of the name of the person or persons elected," and further provides that it shall be the duty of the governor, on the receipt of the returns of the election as aforesaid, "to declare by proclamation the names of the persons so returned as elected in the respective districts;" that is to say, returned as elected in a return which also purports to return *all* the votes given for the office in the district.

The paper in question does not purport to return all the votes given for the office in the district. It shows on its face that the vote of one county in the district was not counted, and therefore that the judges had not before them the means of knowing who was elected; and, indeed, the return substantially is,

that Mr. Coffroth had a majority "of all the votes cast as counted before the board," (that is to say, of the votes in four out of five counties which composed the district,) and therefore is duly elected. This return is so essentially defective that I conceive it to be no return at all, and am of opinion that the governor ought not to base his proclamation on it as a return.

I regretted to observe, on the argument, that it was stated by the counsel of Mr. Koontz that all the illegality, irregularity, and confusion which have attended the returns from this district arose from the action of a majority of the judges of election in Adams, Bedford, and perhaps one other county, in illegally throwing out parts of what are called the soldiers' vote. Their duty is clearly defined by law to be to cause the clerks to make out a fair statement of *all* the votes which shall have been given at the election. To usurp the power of throwing out, at their discretion, any votes so given, is to commit a wilful and grievous offence, for which, if found guilty by a jury, they can be adequately punished. Inconvenience from their illegal course can also be avoided, as the House of Representatives has full jurisdiction over the election and returns, and may apply a summary remedy if the alleged state of facts should be properly substantiated. But, as the governor cannot, if satisfied that the offence has been committed, thrust the offenders into the penitentiary, and thus usurp the power of the judicial tribunals, so neither can he constitute himself a judge of the election, and thus usurp the power of the House of Representatives, which is the proper tribunal to adjudicate on it. He has no more right to put votes into the county returns than the county judges of election had to put them out; or to treat as valid the acts of a seceding minority of the county judges of election, than he would have to treat as the act of the House a bill emanating from a similar seceding minority of that body. His duty is not to lend himself to revolutionary action of any kind. He is to preserve order, not to abet confusion. He is to obey the act of assembly; and as no returns have been presented such as that act authorizes him to base his proclamation upon, I am of opinion that he has no legal course but to state that fact as his reason for not declaring the name of any person to have been returned as elected in the sixteenth congressional district.

Surrounded by the contagious unrest of angry and excited passions, and often forced, amid such surroundings, to act promptly on questions of the most difficult and delicate character, it may appear to require some moral firmness in the executive magistrate to avoid being swept beyond the limits of his appropriate sphere.

But it is to be recollected that we have a popular government, and in such times as these public confidence, important to every government, is essential to ours.

It appears to me that he must be the boldest of men who, being at the head of the government of any one of our States at this crisis, should have the courage to be feeble and vacillating, regardless of law, partial in his judgments, usurping in his practice, and guided by merely personal feelings or personal influence, thus loosening the structure of our political fabric, and exposing its very foundations to depredation.

On the other hand, I should esteem him to be fortunate who, in such a position, rising to the level of the occasion, should leave behind him all the turns of ordinary politics, should preserve his own calmness during the storms that are raging—not as lacking emotion, but as feeling that upon his calmness may depend the public safety who should combine a thoroughly active, energetic, and loyal administration of affairs with open fairness and equality to all; obey himself the law to which he enforces the obedience of others; compel the trust of the honest and truth-loving masses of all parties in his vigor, justice, and integrity; and thus, commanding the public confidence, cause to strike daily

deeper and deeper the roots of authority, and make threatened confusion and anarchy impossible by rendering irresistible the just power of government.

I should esteem him to be fortunate, because, though his task would not be easy, when he should have fulfilled it he would have connected for all time his own honor with the history of the salvation of the republic.

W. M. MEREDITH,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
Harrisburg, December 16, 1864.

No. 33.

IN THE HOUSE OF REPRESENTATIVES, *December 5, 1865.*

On motion of Mr. Williams,

Resolved, That the certificates, and all other papers, relating to the election in the 16th congressional district of Pennsylvania, be referred to the Committee of Elections, when appointed, with instructions to report, at as early a day as practicable, which of the rival claimants to the vacant seat from that district has the *prima facie* right thereto, reserving to the other party the privilege of contesting the case upon the merits without prejudice from lapse of time or want of notice.

Attest:

EDWARD McPHERSON, *Clerk.*

H. Rep. Com. 12—6

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BALDWIN vs. TROWBRIDGE.

FEBRUARY 5, 1866.—Laid on the table and ordered to be printed.

Mr. SCOFIELD, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the petition of Augustus C. Baldwin, claiming a seat in the 39th Congress as representative from the fifth congressional district of Michigan, report as follows :

There is no question of fact, and only one of law, involved in this contest. The constitution of the State of Michigan, article VII, section 1, reads as follows :

“SEC. 1. In all elections, every white male citizen, every white male inhabitant residing in the State on the twenty-fourth day of June, one thousand eight hundred and thirty-five; every white male inhabitant residing in the State on the first day of January, one thousand eight hundred and fifty, who has declared his intention to become a citizen of the United States, pursuant to the laws thereof, six months preceding an election, or who has resided in this State two years and six months, and declared his intention as aforesaid, and every civilized male inhabitant of Indian descent, a native of the United States, and not a member of any tribe, shall be an elector and entitled to vote; but no citizen or inhabitant shall be an elector, or entitled to vote at any election, unless he shall be above the age of twenty-one years, and has resided in the State three months, and in the township or ward in which he offers to vote ten days next preceding such election.”

The first and second sections of an act of the legislature of that State, passed February 5, 1864, are as follows :

“SEC. 1. *The people of the State of Michigan enact*, That every white male citizen or inhabitant of this State, of the age of twenty-one years, possessing the qualifications named in article seven, section one, of the constitution of the State of Michigan, in the military service of the United States or of this State, in the Michigan regiments, companies or batteries, shall be entitled to vote at all of the elections authorized by law, as provided in this act, and every such citizen or inhabitant shall thus be entitled, in the manner herein prescribed, whether at the time of voting he shall be within the limits of this State or not.

“SEC. 2. Every soldier belonging to Michigan regiments and batteries or companies, in the military service of this State or of the United States, or volunteer soldiers, residents of Michigan, belonging to regiments, batteries or companies, present on the day of election from other States, including officers and their staffs, surgeons and assistant surgeons, chaplains and commissioners appointed under this act, shall, if possessed of the qualifications set forth in section one of this act, be entitled to the benefits of the provisions thereof.”

Under this act of the legislature, a large number of votes were cast by soldiers outside the limits of the State. If these votes can be lawfully counted, Mr. Trowbridge has a majority of the whole, and is entitled to the seat; if not, Mr.

Baldwin, having a majority of the home vote, is entitled to it. It will be observed that the elector is prohibited by the constitution of the State (taking the interpretation of its supreme court as correct) from voting outside of the township or ward in which he resides, but by the act of the legislature is allowed, when absent in the military service of the country, to vote even outside the State. Here is an unmistakable conflict of authority. The constitution plainly prohibits what the legislature as plainly permits. The one authorizes the election to be held only in the township or ward—the other at military headquarters. The power to act at all in the premises, so far as concerns representatives in Congress, is derived from article one, section four, of the Constitution of the United States, which is as follows :

“The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but Congress may at any time by law make or alter such regulations, except as to the place of choosing senators.”

Here the power is conferred upon the *legislature*. But what is meant by “the legislature?” Does it mean the legislative power of the State, which would include a convention authorized to prescribe fundamental law; or does it mean the legislature *eo nomine*, as known in the political history of the country? The committee have adopted the latter construction. At the time the Constitution of the United States was written, there existed in the thirteen States for which it was designed legislatures, created or restrained by some fundamental law, in the shape of charters or constitutions, very much as they exist in the several States now. With this fact before them, it is not probable that the framers of the Constitution, if they intended to confer this power upon State organic conventions, would have chosen some word less liable to misconstruction. It is also apparent, from the manner in which this word is used in other parts of the instrument, that its framers recognized a wide difference between a continuing legislature and a convention temporarily clothed with power to prescribe fundamental law. Article V provides that Congress “shall call a convention for proposing amendments * * * on application of the *legislatures* of two-thirds of the several States.” Also that amendments shall be valid when “ratified by the *legislatures* of three-fourths of the several States, or by *conventions* of three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.” Article VII provides that “the ratification of the *conventions* of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.” The convention closed their labors with the following resolution :

“*Resolved*, That the preceding constitution be laid before the United States in Congress assembled; and that it is the opinion of this convention that it should afterwards be submitted to a *convention* of delegates chosen in each State by the people thereof, under the recommendation of its *legislature*.”

In these extracts the words “legislature” and “convention” are both used to denote different legislative bodies, and in such contrast as to clearly indicate that the former is employed in its historic rather than in its normal sense. In article I, section 2, the words of the constitution are “the electors in each State shall have the qualifications requisite for the most *numerous branch of the State legislature*.” Did anybody ever hear of a constitutional convention, in the history of this country, composed of two houses? Article I, section 3, provides that “the senate shall be composed of two senators from each State, chosen by the *legislature* thereof.” In article II, section 1, it is said “each State shall appoint, in such manner as the *legislature* thereof may direct, a number of electors,” &c. In section 8 of article I, “the consent of the *legislature* of a State” is required before the United States can purchase places for forts, &c. Again, in article IV, section 4, is said that, “on application of the *legislature*, or the

executive, (when the legislature cannot be convened,) Congress shall protect each State against domestic violence." It will hardly be claimed that a constitutional convention could perform the duties thus conferred upon the legislature; much less that it could forbid the legislature *eo nomine* from discharging them after its own dissolution.

But the legislation of Michigan may be sustained as against the constitution of that State, even if the word legislature is to be taken in its most enlarged sense. Whatever power the convention of that State possessed to prescribe the places of holding elections for representatives in Congress was derived, not like its other powers, from the people, but from the Constitution of the United States, and that, too, because it was a *constructive legislature*. The power conferred is a continuing power. It is not used up when once exercised, but survives the dissolution of the convention. The words of the Constitution are as potent then as before, and if there is any legislative body in the State that can be properly called a *legislature*, they appertain to it as strongly as to any prior legislative body. They do not authorize any convention or legislature to tie the hands of its successors. The people authorize a convention to do that where they (the people) have power; but certainly the people of Michigan had no power to enlarge or restrict the language of the constitution of the United States. This view of the case entirely harmonizes what was at first supposed to be a partially adverse precedent in the case of *Shiel vs. Thayer*, from the State of Oregon.

It was said in argument that the legislature might abuse this power; but that does not disprove its existence. It would be equally liable to that objection if lodged in any other department of government. It is not claimed, however, that in this instance the power was abused. Mr. Baldwin conceded that to allow a vote to be cast by a soldier detained in the service of his country was a very proper use of the power, provided the legislature possessed it. If, however, it should in the future be abused, Congress has entire authority to correct it.

But, again, the contestant claims that a State has the power to prescribe the qualifications of electors, and may exercise it by an organic convention, to the exclusion of the legislature. The committee are not disposed to controvert this position. That power has been conceded to the States, and exercised by them in the manner suggested, from the beginning of the government to the present time. But it does not follow, as the contestant supposes, that the place of holding the election for a representative in Congress may be prescribed as one of the electoral qualifications. Control over the place of voting is lodged in the legislature by the unmistakable language of the Constitution, and cannot, however disguised by names or circumlocution of words, be transferred to another department of government. Now, the constitution of Michigan either fixes the place of holding the election or it does not. If it does not, there is no conflict between the law and the constitution, and the argument is at an end. If it does, then, as before shown, the convention which adopted it entirely exceeded its power, unless such convention is to be considered a *legislature by construction*; and in that event its power, as has also been shown, was just as ample as that of any subsequent legislature, and no more. The power to prescribe the *place*, whether called a qualification, limitation, or condition, is still vested in what the constitution calls "the legislature," and there it must remain. It cannot be divested by giving it another name, however apt it may be.

The committee, then, submit the following resolution, and recommend its adoption:

Resolved, That Rowland E. Trowbridge is entitled to a seat in this house as a representative in the thirty-ninth Congress from the fifth congressional district in Michigan.

BALDWIN vs. TROWBRIDGE.

FEBRUARY 9, 1866.—Laid on the table and ordered to be printed.

Mr. MARSHALL, from the minority of the Committee of Elections, submitted the following

REPORT.

The undersigned, having carefully considered the questions of law involved in this case, has come to the conclusion that Mr. Baldwin was duly elected and is entitled to the seat which he claims.

It is admitted that of the votes cast within the State of Michigan for representative in Congress from the fifth congressional district of that State Mr. Baldwin had a majority. It is also admitted that a large number of citizens of Michigan who were out of the State and in the service of the United States on the day of said election, in pursuance of the provisions of an act of the legislature of Michigan, approved February 5, 1864, voted at the places where they happened to be on the day of election; and that if these votes can be lawfully counted, Mr. Trowbridge had a majority and was duly elected. If they cannot be lawfully counted, Mr. Baldwin was duly elected, and is entitled to the seat.

The question submitted is, therefore, purely a legal one, and involves some nice questions of constitutional law.

Article VII, section 1, of the constitution of the State of Michigan, after prescribing the qualification of electors, provides that "no citizen or inhabitant shall be an elector, *or entitled to vote at any election*, unless he shall be above the age of twenty-one years, and has resided in the State three months, and in the township or ward *in which he offers to vote* ten days next preceding such election."

The supreme court of Michigan, in a case arising out of the identical election out of which this contest has arisen, (*the case of The People ex rel. Daniel S. Twitchel vs. Amos C. Blodgett*), have construed this provision of their constitution to mean that the elector shall be personally present, in the township in which he resides, on the day of election, and there in person present his ballot at the place of voting; and that the act of the legislature of February 5, 1864, "IS IN DIRECT CONFLICT WITH THE CONSTITUTION, AND FOR THIS REASON VOID." This case was very thoroughly discussed and considered by the court, the judges all giving separate opinions, and it seems to me impossible to read the case without arriving at the same conclusion. This is the highest and most authoritative exposition of that provision of the State constitution that can be given. The supreme court of Michigan is the most authoritative expounder of the constitution and laws of the State, and all other tribunals, including even the Supreme Court of the United States itself, are bound to follow and abide by the construction which the State court has placed upon their own constitution.

I will not dwell upon this point in the case, as I do not understand the majority of the committee, or, indeed, any one in behalf of the claims of the sitting

member, to seriously dispute the correctness of the construction placed upon their constitution by the supreme court of the State. It is admitted, I believe, that the act of the legislature of February 5, 1864, was in direct conflict with the organic law of the State.

It is contended, however, that the legislature, in determining the times, places, and manner of holding elections for representatives in Congress, are not bound to conform to the provisions of the organic law of the State. That they have a power above, and wholly independent of their State constitution. And this power is supposed to be found in section 4, of article 1, of the federal Constitution, which is as follows :

“The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law make or alter such regulations, except as to the places of choosing senators.”

In determining the proper construction to be placed on this clause of the federal Constitution, it is important to inquire, first, What was the object of the framers of that instrument in engrafting into it such a provision? Why was it deemed necessary and proper? It is hardly possible that there can be two opinions in regard to this.

The convention had provided for a federal Senate and House of Representatives, in which the legislative power of the proposed government was to reside. The effective organization and continuance of these bodies were necessary to the very existence of the government under the plan proposed. To have a Senate and House of Representatives it was necessary that members thereof must be elected at regular and stated periods; and it was argued with great force that a majority of the States, becoming refractory, might, by the simple act of refusing to provide the times, places, and manner of holding elections for senators and representatives, and thereby defeating the election of these officers, suspend the action, destroy the power, or even blot out of existence the federal government.

It became necessary, therefore—absolutely necessary—to secure the continued existence and effectiveness of the federal government, to reserve to Congress the power at any time by law to make or alter such regulations. The object was to secure to the federal government, for its own safety, the due election of these officers—not to confer upon the States, or any department thereof, any powers whatever, or to interfere in any way with them in their mode of electing these officers, as long as the exercise of this power was left to the States. The object manifestly was simply to leave to the States the power to determine the times, places, and manner of holding these elections, until Congress saw proper to exercise the powers conferred upon it for that purpose.

But it is argued that this power was by express terms left not to the *States* simply, but to the *legislatures* thereof, and that this is such a limitation upon the people of the States that they have no power to restrict their legislatures in the exercise of this right conferred upon them by the federal Constitution; but I submit, with all due respect, that not only the history and object of the section under consideration, but the proper definition of the term “legislature,” as therein used, show the fallacy of this construction.

The “legislature” of a State, in its fullest and broadest sense, signifies that body in which all the legislative powers of a State reside, and that body is the people themselves who exercise the elective franchise, and upon their power of legislation there is no limitation or restriction, except such as may be found in the federal Constitution, or such as they may themselves provide by the organic law of the State. When they assemble in convention, which in large communities is from necessity done by the agency of delegates or representatives of the people, the whole legislative power of the State is then vested in such convention. It can abolish, or in whole or in part abrogate the proceedings of

"the general assembly" or "legislative council" or "general court," or whatever may be the designation of that subordinate body in which is usually lodged a portion or residuum of the legislative power of a State. Indeed, the people of a State might provide for the periodical assembling of their convention, which would exercise and perform all legislative powers and duties without the intervention of that body of limited and restricted powers, popularly called a legislature, but which in the constitutions of most of the States is called by some other name. It is variously designated a "general assembly," a "legislative council," a "general court," and the like, and is nowhere understood to hold in its grasp all the legislative powers of a State.

In Missouri during the late rebellion, the State convention continued its existence for years, performing all the ordinary acts of legislation, and its power to do so is not questioned. That that was a "legislature" within the sense of the term as it is used in this clause of the federal Constitution will hardly be controverted; and indeed every State convention called by the people to determine the form of government, or the powers and duties of the various officers thereby created, is a legislature, and performs many of the ordinary acts of legislation. Indeed, it is *the* legislature *par excellence* of the State, and that other body usually created by it, whether called a "general assembly," "general court," or otherwise, is the creature of this paramount legislature, and is liable to be modified or annihilated whenever this "legislature" proper—the convention of a State—shall again assemble. This secondary or subordinate body is the creature of the organic law of the State, owes its existence to it, and can rightfully do nothing in contravention of its provisions.

If, then, this section of the federal Constitution can be construed to refer to this secondary or subordinate legislative body of a State, it must be held to mean that the time, place and manner of holding elections for representatives shall be prescribed in each State by the legislature thereof, such legislature acting in subordination and in conformity to that organic law to which it owes its own existence. If the State constitution has fixed no limitation, the power of the legislature is ample and complete. But if the constitution has fixed limits this legislature cannot transcend them, but must act within the limits prescribed, and if it goes beyond them its action is to that extent absolutely void.

Indeed, from the adoption of the federal Constitution until this time, it was never before contended, as far as I am informed, that the clause in question conferred upon that body in a State in which was reposed that residuum of legislative power, not exercised by the State convention, power to act utterly independent of, and in utter disregard of, the State constitution, by virtue of which alone it has any existence. The people have everywhere supposed that they had the power to fix a limitation upon the action of their legislature, in determining the times, places, and manner of holding elections for all offices. They have exercised this power in most of the States by fixing limitations in their State constitutions, and in every instance, I believe, where a conflict has been found to exist in this respect between the State constitution and an act of their legislature, the constitution has, by courts and legislative bodies, been sustained, and the acts of the legislature, to that extent, held to be null and void. And this House is now, for the first time, called upon to decide that in this respect a State legislature may override and utterly disregard the provisions of the very constitution that brings it into being. I admit that if there was an irreconcilable antagonism between the federal and State constitutions, in such case, there would be ground for the position taken by the majority of the committee. But no such antagonism exists. I therefore call upon the House to pause long before they establish a precedent that will operate as an invitation to the State legislatures to disregard those wholesome limitations which the people have attempted to place around the action of their own servants.

This long and undisturbed construction of their power to fix these limitations

upon the action of their servants, placed upon the Constitution by the people themselves, and by all departments of the government, ought not at this late day to be disturbed, unless it is rendered absolutely necessary by the very terms of the Constitution itself.

This House has a record of its own, and has ever attempted to adhere to the construction placed by itself in former adjudicated cases upon the Constitution and laws. This is not a new question, as far as this House even is concerned. It is, indeed, *res adjudicata*. And we should not, without very strong reasons, indeed, depart from the precedents established by ourselves. These precedents are all in favor of the construction which I have here placed upon this clause of the Constitution.

The case of *Shiel vs. Thayer*, in the 37th Congress, reported in Bartlett's Contested Election Cases, page 349, is directly in point. The syllabus of the case says:

"The constitution of Oregon has *fixed beyond the control of its legislature* the time for holding an election for representative in Congress."

The report in that case was made by the then and now able chairman of the Committee of Elections, Mr. Dawes, and the right of Mr. Shiel to the seat was placed distinctly on the ground that the people of Oregon had the right, in their constitution, to fix the time for the election of a member of Congress.

"The committee," says the report, "are of opinion that the election held for representative in Congress on the first Monday in June, 1860, was held in pursuance of, and in conformity with, the constitution and laws of Oregon, and that consequently the contestant is entitled to the seat." And again: "Notwithstanding this constitutional provision that general elections shall be held on the first Monday of June biennially, the legislature of Oregon seems to have believed that it had power to fix another time for the election of representative in Congress. * * * The committee have not deemed it necessary to determine what those reasons are for. With all due respect to the opinions of the gentlemen composing that legislature, they are of opinion that this House must, nevertheless, be the final judge of the meaning of this clause of the constitution of Oregon. And, for the reason stated, the committee have no doubt that the CONSTITUTION of the State has *fixed* BEYOND THE CONTROL OF THE LEGISLATURE the time for holding an election for representative in Congress, at the general election to be held biennially, and that at such election, so held IN PURSUANCE OF THE CONSTITUTION, the contestant was duly elected." And again, in the debate in the House on this case, Mr. Dawes said: "It occurs to me, sir, that that provision of the Constitution of the United States which says that the time and place shall be specified by the legislature of each State, *meant simply that they should be fixed by the constituted authority of the State* until Congress itself should fix a time for the election in all the States."

In the case of *Farlee vs. Runk*, in the twenty-ninth Congress, it was held that where there was a conflict between the State constitution and an act of the legislature in regard to the *place* of voting for representative in Congress the provision of the constitution was binding, and the act of the legislature, so far as it conflicted with it, was void. (See Bartlett's Contested Election Cases, p. 87.) And, without troubling this House with a further citation of authorities, I respectfully submit that the ruling of the House on this point has been uniform in every case in which the question arose.

But admitting that the legislature was acting, and had the right to act, by virtue of this section 4, article 1 of the federal Constitution, without regard to the State constitution, I still submit that all votes cast out of and beyond the State of Michigan were cast without any due, legal authority, and cannot properly be counted in determining the result of elections in that State, for the reason—

First. It seems to me plain that neither Congress nor the State legislature

can, under that clause of the Constitution, fix or prescribe any places of voting for any office outside of the district, and especially outside of the State, within and for which the officer is elected. In the construction of all powers granted, we must have reference to the object for which the power is given. At and before the adoption of the Constitution, and ever since until within the last five years, all voters, everywhere in the United States, were required to vote within the district and State for which the officer is elected. At the time of the adoption of this clause, it is not easy to suppose that any one member of the convention for one moment thought that they were granting to Congress the power to permit citizens to vote outside of the district and State for which the officers were to be elected. If the legislature possesses this power, undoubtedly Congress possesses the same power. And if Congress possesses the power to *prescribe* places of voting outside of a district or State for a portion of its citizens, why not the power to *prescribe* places of voting outside of the State for *all* the citizens thereof? Why not *prescribe* that all the citizens of Michigan shall vote in Chicago for their members of Congress, and all the voters of Illinois go to St. Louis to vote for theirs? It may be said that this would be a gross abuse of power. But I deny the existence of any such power. And yet, if the power contended for by the committee exists, the other follows as a necessary consequence.

But the act of the Michigan legislature (by virtue of which the votes were cast outside of the State that it is proposed to count for the sitting member) does not *prescribe* the *place* or *places* of voting, and consequently the votes were not cast in pursuance of any competent authority. The provision of said statute is as follows:

"SEC. 7. At the elections herein provided for a poll shall be opened at every place, whether within or without the State, where a regiment, battalion, battery or company of Michigan soldiers may be found or stationed, and at such election all persons may vote who are thereto entitled by law and by the provisions of this act."

Now, will any one pretend that that prescribes a place or places of election? What place or places? Would a law which provided that any elector of Michigan should vote at any *place*, within or without the State, where he might happen to be on the day of election, prescribe a place of voting? This is too clear, I submit with all-deference, to admit of argument. If Congress or the legislature can prescribe places of election outside of the State, I insist that the *places* must be named in the act; and that it is no compliance with the Constitution to provide that a man, or a company of men, may vote at any place where they may happen to be on the day of election, and that such a law does not prescribe a *place* of election at all.

If the above positions, or any one of them, be correct, it follows that all votes cast for either Mr. Trowbridge or Mr. Baldwin outside of the State of Michigan were cast without any authority of law, and cannot properly be counted in making up the result, and, consequently, that Mr. Baldwin is entitled to the seat.

I therefore propose, as a substitute for the resolution reported by the committee, the following:

Resolved, That the Hon. Rowland E. Trowbridge is not entitled to hold the seat now occupied by him in this House as a representative from the State of Michigan.

Resolved, That Augustus C. Baldwin has been duly elected as a representative from the State of Michigan to the thirty-ninth Congress, and is entitled to a seat in this House.

S. S. MARSHALL.

OWNERS OF CERTAIN LANDS IN ST. LOUIS.

[To accompany bill H. R. No. 15.]

FEBRUARY 13, 1866.—Ordered to be printed.

Mr. THAYER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the bill authorizing documentary evidence of titles to be furnished to the owners of certain lands in the city of St. Louis, have had the same under consideration, and report as follows :

There were numerous settlements in Louisiana in 1803. The settlement began in 1683. New Orleans was founded in 1720, and became the seat of government for the province in 1722. The province was divided into two districts, called Upper and Lower Louisiana, to each of which were assigned a commandant and judge, offices which, in practice, were usually filled by the same person. Land grants were made on the petition of settlers to the commandants, who permitted them to take possession; but the authority to give title was in the governor general at New Orleans. Many thousands took possession under such permits in Upper Louisiana; but scarcely any of the settlers had either the means to proceed further, or knew that further proceedings were needful to give them title; so that there were very few complete titles in Upper Louisiana prior to the change of government in 1804.

The act of March 2, 1805, and the act of March 3, 1807, amendatory thereof, were passed to carry out the treaty stipulation with France, which obliged us to secure the inhabitants in their titles. By these acts a board of three commissioners was established to examine and confirm the claims of the inhabitants. Some claims were presented and passed upon by the board; but not one in ten were presented, the people being too poor and ignorant, and their lands of too little value at that time to attract attention on the part of the few who were sufficiently well informed to know the importance of the proceeding. Besides, the board was very rigid, and rejected, as not within the law, the greater part of those which were presented. Mr. Penrose, a distinguished member of the board, made a report, in March, 1812, to the Secretary of the Treasury, (then the head of the land department,) recommending legislation of a more liberal character and better suited to the condition of the people. The act of June 13, 1812, is ascribed to these representations. That act confirmed to the villagers the lots which they had possessed prior to December 20, 1803. Its peculiarity is, that it dispensed with all inquisition by the government into the origin of the titles; required nothing to be shown to any officer of the government to vest the title, but only that they should show possession at a designated time in order to resist any attempt to oust them. Such is the effect of the act as construed by the Supreme Court. (See *Guitard vs. Stoddard*, 16 Howard, 494; *Garrison vs. Savignac*, 18 Ib., 136.)

This mode of settling the titles was well suited to the condition of the people in St. Louis in 1812, when all the village were witnesses to prove the facts on which their titles depended, when their lots were of little value, the villagers

too poor and ignorant to employ counsel to appear before a board of commissioners, get their possessions proved, have surveys made, get confirmation certificates, forward them to Washington and get patents, which was the process required under the acts of 1805 and 1807. But it is not so satisfactory when but few witnesses survive to prove possession, when the lots are greatly enhanced in value, and when the place has become a great commercial metropolis. In this condition of society the marketable value of the property is much affected by the want of documentary evidence of title. There is nothing of record to show that the act of 1812 operates on the lots in question. A purchaser cannot take the proofs and a lawyer cannot advise with certainty on the state of the title from the record.

As the title is derived from the government, it is due to the parties that the government should, as far as possible, furnish the necessary means of perpetuating it. The usages of the governments to whose rights and duties we succeeded in respect to these claims, were to make specific grants by survey in such cases, and these usages and our own render it proper that we should complete the grant in this form.

This class of owners now ask Congress to authorize the federal courts to take proof of the fact on which the act of 1812 operates, that the judgment of the court shall be proof of the fact, and thus make complete title of record for the grantees.

Few conflicts are anticipated in carrying the law into effect, but the bill has been framed to settle any that may arise fairly and finally.

The act proposed is similar in object and effect to the act of 1824, 4 Stat., p. 65, which was supplementary to the act of 1812, but expired eighteen months after its passage, and before all the cases were disposed of. The Supreme Court, in 16 Howard, p. 511, fully explain the operation of that act, and the necessity of this. The principle of that act and of the one now proposed is the same, but it is deemed best that questions of title of this nature should be adjudicated by a judicial tribunal. The committee submit herewith certain amendments to the bill referred to them, and recommend the passage of the bill with the amendments proposed.

WAR DEBTS OF THE LOYAL STATES.

[To accompany bill H. R. No. 282.]

FEBRUARY 16, 1866.—Ordered to be printed.

MR. BLAINE, from the Select Committee on the War Debts of the Loyal States,
made the following

REPORT.

The select committee to whom was referred, on the 11th of December last, a bill "to reimburse the loyal States for advances made and debts contracted in support of the war for the preservation of the Union," ask leave to report the same in an amended form, which is herewith submitted.

Immediately after being appointed, the committee resolved to ascertain, in an authentic manner, the amount expended in support of the war by each State, and by the counties, cities, and towns within each State. To this end a letter of inquiry was addressed to the several governors, and responses, giving the desired information, have been received from every State except California, Oregon, and Nevada. Answers by mail are scarcely due from those distant States, but the committee have not deemed it important to delay their report in order to hear from them, inasmuch as their slight participation in the war renders it certain that their expenditures could not be sufficiently large to have an appreciable influence upon the measure which the committee ask leave to propose.

The following table will show the amounts returned by the several States, as expended directly by the States, or by the municipal corporations within the States. The sum total reaches the enormous amount of \$467,954,364. In many instances the governors in communicating the statistics have advised the committee that for want of exact data they were compelled to make estimates, and that these estimates were believed to be always under rather than over the truth. Had the time been more extended, and the accounts made up in all cases with more precision, there can be no doubt that the aggregate would have reached *four hundred and seventy-five millions*, if it did not indeed greatly exceed that sum. And it must be remembered that this does not include the amount raised by State taxation for war expenses, nor any of that vast sum so generously contributed throughout the loyal States by individuals and by associations for the support of the Union cause. It simply includes the amounts that State and municipal authorities raised by loans—a very large proportion of which is still unpaid and demands the severest form of taxation to provide for its annual interest. With this explanation, the following table of State and local expenditure will be the more clearly understood:

Maine.....	\$12, 632, 580
New Hampshire.....	13, 125, 000
Vermont	8, 806, 759

Massachusetts.....	\$47, 809, 827
Rhode Island.....	6, 500, 772
Connecticut.....	17, 386, 151
New York.....	111, 005, 953
New Jersey.....	26, 786, 421
Pennsylvania.....	53, 527, 395
Delaware.....	1, 140, 000
Maryland.....	8, 656, 458
West Virginia.....	2, 000, 000
Ohio.....	64, 867, 813
Indiana.....	22, 334, 967
Illinois.....	30, 000, 000
Michigan.....	12, 000, 000
Wisconsin.....	12, 240, 795
Minnesota.....	2, 518, 361
Iowa.....	2, 200, 000
Missouri.....	9, 446, 575
Kentucky.....	2, 150, 537
Kansas.....	818, 000

Simultaneously with this call upon the States for information in regard to their expenditures, the committee, by a resolution of the House, obtained from the Secretary of War a statement of the number of troops furnished by each State under the several calls during the war, together with an exhibit of the aggregate from each of the States reduced to a uniform standard of three years' service. The tabular statement of the Provost Marshal General, giving this information, is appended to this report, and it will be seen that the total number of three-years men for the war was 2,154,311.

Without entering into any calculation as to the different ratio of expense in raising troops in different States, it will be observed that the average for all the States exhibits the fact that each three-years man that entered the United States' service during the war cost about two hundred and twenty dollars, beside the amount paid by the general government. It is not the province of the committee to inquire whether this expenditure was in all cases wisely made. It is sufficient to state that it was actually incurred under what was believed to be the pressing and imperious necessity of the Union cause.

In the judgment of the committee it would not be fair and equitable to propose any mode of reimbursement to the several States, except that which is based on the number of men furnished by each during the war. All the States were under precisely the same obligation to respond to the call of the government, in proportion to their respective numbers of enrolled men, and the committee have not therefore felt at liberty to make any discrimination in favor of one State over another in consequence of the different cost in filling their quotas. Local expenditure was, indeed, a recognized necessity in all the States, and strict justice will be maintained by making an impartial reimbursement, exactly proportioned to the aid which each State rendered to the common cause of the Union.

The committee, for the most obvious reasons, have not considered it expedient to attempt a system of reimbursement sufficiently comprehensive to include the total outlay within the States. The burden which would thus be precipitated on the general government would be too heavy, and might end in oppressing instead of relieving the different members of the Union, by impairing the credit of the whole. But a very substantial, permanent, and grateful relief can be afforded to the States by reimbursing only a minor fraction of their expenditures; and this, in the judgment of the committee, can be done without injuring the credit of the government in the slightest degree. Indeed, the credit of the

government will be materially strengthened by any prudent measure which will enable the States to provide the means of paying their indebtedness, and thus reducing the rate of local and direct taxation, now so oppressively high throughout the country.

Influenced by these considerations, the committee have agreed to report, as the basis of reimbursement, a sum equivalent to twenty-five per cent. of the average expenditure throughout the loyal States—in other words, fifty-five dollars for each man furnished—service being reduced to the uniform standard of three years. At this rate the following amounts would be reimbursed to the several States :

Maine.....	\$3, 112, 725
New Hampshire.....	1, 695, 485
Vermont.....	1, 597, 860
Massachusetts.....	6, 811, 420
Rhode Island.....	983, 290
Connecticut.....	2, 778, 270
New York.....	20, 993, 280
New Jersey.....	3, 068, 175
Pennsylvania.....	14, 715, 690
Delaware.....	566, 665
Maryland.....	2, 238, 060
West Virginia.....	1, 520, 915
District of Columbia.....	632, 830
Ohio.....	13, 088, 680
Indiana.....	8, 375, 565
Illinois.....	11, 698, 170
Michigan.....	4, 447, 575
Wisconsin.....	4, 344, 175
Minnesota.....	1, 082, 125
Iowa.....	3, 750, 010
Missouri.....	4, 740, 560
Kentucky.....	3, 869, 140
Kansas.....	1, 025, 970
Tennessee.....	664, 235
California.....	409, 805
Nevada.....	11, 880
Oregon.....	31, 955
Washington Territory.....	49, 225
Nebraska Territory.....	20, 900
Colorado Territory.....	96, 910
Dakota Territory.....	9, 955
New Mexico.....	55, 605
Total.....	<u>118, 487, 105</u>

It is not proposed, of course, to pay this amount to the States in cash. It would not be desirable, even if it were practicable, to make the payment in that way. The mode of reimbursement recommended by the committee is to issue bonds of the United States to the several States for the amounts adjudged to be due them; the bonds to be registered, to be redeemable at the pleasure of the United States after twenty years from date, and to bear interest at the rate of five per cent. per annum, payable semi-annually in lawful money.

And in issuing bonds for this purpose, it is very important for the interests of the public treasury and the protection of the public credit that the States should not be allowed to dispose of them until they become redeemable by the govern-

ment. Hence the bill submitted expressly declares that the bonds to be issued shall not be negotiable until after the 1st day of July, A. D. 1886, and then only upon the indorsement of the governor of the State to which the bonds may belong. And it is respectfully submitted that this provision is as much for the advantage of the States as for the general government, even were it possible that their interests on such a question could be antagonistic. Such a restraint on the States will, with certainty, cause the bonds to be used as a sinking fund for the redemption of whatever State debt may exist, and will effectually prevent their sudden diversion to any scheme which mature reflection might not approve. The indorsement of the governor being requisite to make the bonds negotiable, a perfect safeguard is thus provided against any fraudulent use of them within the time specified, and also against any loss on account of theft or accidental destruction.

The committee have also deemed it important that each State on receiving the bonds shall thereby relinquish all further claim on the general government for any expenses incurred or losses sustained during the late war, either by the State or by any municipal corporation within the State. The claims which may be preferred are endless in character and in amount, and it will be a great point gained if the general government can, by a comprehensive payment of the kind now recommended, at once and finally close the door against all demands for specific appropriations of this nature. It is hazarding little to say that, in this view alone, the measure is one of wise and permanent economy to the general government.

It is believed that the proposed measure is founded on right and justice, because all expenditures that were made to preserve the life of the nation should, as far as practicable, be borne in common by those who share the benefits and blessings of our government. It would seem flagrantly unjust to leave a heavy local debt on a portion of the States when that debt was incurred for the common benefit of all the States. To ask that the general government should refund one quarter part of the local expenditure is certainly a very moderate proposition, and if there be any injustice therein, it consists in not going far enough in the direction of relief to the loyal States.

The increase to the national debt caused by this reimbursement is nominal rather than real. It does not add a single dollar to the debt of the country. It merely changes the form of a certain portion of that debt from a State and local to a national and general obligation, bearing impartially on all the States and on all the people of the Union.

The general government has the great advantage of monopolizing all the channels of indirect taxation, leaving to the States no mode of raising revenue except that which is the hardest and most oppressive. And the direct local tax comes with all the more severity on a large class of the community—especially holders of real estate—from the fact that so great a proportion of the personal property has sought investment in government bonds, which are expressly exempt from State and municipal taxation.

Considerations of this character have had a large influence on the committee in proposing the measure which, with these explanations, is now respectfully submitted.

Statement showing the number of men furnished by each State and Territory since April 1, 1861, on the different calls for men who were required for periods of three months or more; also showing the number of men accredited to each State and Territory upon the basis of three years as a standard of computation.

States and Territories.	Men furnished under call of April 15, 1861, for 75,000 militia for three months.	Men furnished under call of May 3, 1861, (confirmed by act of August 6, 1861,) and also under calls under acts approved July 22 and 25, 1861, for 500,000 men, for—				Men furnished in May and June, 1862, by special authority, for three months.	Men furnished under call of July 2, 1862, for 300,000 men for three years.	Men furnished under call of August 4, 1862, for 300,000 militia for nine months.	Men furnished under President's proclamation of June 15, 1863, for militia for six months.	Men furnished under call of October 17, 1863, (which embraces men raised by draft in 1863,) and February 1, 1864, for 500,000 men for three years.	Men furnished under call of March 14, 1864, for 200,000 men for three years.
		Six months.	One year.	Two years.	Three years.						
Maine	771				18,104		6,644	7,620		13,912	7,042
New Hampshire ..	779				8,338		6,390	1,736		6,967	2,955
Vermont	782				9,508		4,369	4,781		8,611	1,690
Massachusetts	3,736				32,177		16,519	16,685	103	21,413	18,876
Rhode Island	3,147				6,286		2,742	2,059		3,686	2,032
Connecticut	2,402				10,865		9,195	5,602		11,874	5,260
New York	13,906			30,950	89,281	8,588	78,904	1,781		75,733	44,453
New Jersey	3,123				11,523		5,499	10,787		9,187	12,611
Pennsylvania	20,175				85,160		30,891	32,215	3,708	55,369	45,617
Delaware	775				1,826		2,508	1,799		2,573	1,603
Maryland					9,355		3,586		1,615	7,350	11,501
West Virginia	900				12,757		4,925		1,148	3,988	3,857
Dist. of Columbia ..	4,720				1,795		1,167			4,888	1,142
Ohio	12,357		863		83,253		58,325		2,736	32,837	36,221
Indiana	4,686		1,698		59,643	1,723	30,359	337	3,767	22,228	14,783
Illinois	4,820				81,952	4,696	58,689			32,179	21,351
Michigan	781				23,546		17,656			20,047	7,697
Wisconsin	817				25,499		14,472	958		15,469	10,059
Minnesota	930		1,167		5,770		4,626			3,052	3,494
Iowa	968				21,987		24,438			9,396	10,072
Missouri	10,591	2,715	199		22,324		28,324		*3,284	3,889	9,733
Kentucky			5,129		29,966		6,463			4,785	9,409
Kansas	650				6,953		2,936			5,374	2,563
Tennessee					3,989		8,088				
California					*5,701		1,750				
Nevada							216				
Oregon					562		15				
Washington Ter'y ..					895						
Nebraska							81	1,198			
Colorado					1,453		309				
Dakota					87		94				
New Mexico	1,510				864		21				
Totals	93,326	2,715	9,056	30,950	671,419	15,007	430,201	87,558	16,361	374,807	284,021

* Furnished in November, 1864.

Statement showing the number of men, &c.—Continued.

States and Territories.	Militia for one hundred (100) days mustered into service between April 23 and July 18, 1864.	Men furnished under call of July 18, 1864, for 500,000 men, for—				Men furnished under call of December 19, 1864, for 300,000 men, for—				Aggregate number of men furnished under all calls.	Aggregate number of men furnished under all calls, reduced to a three-years standard.
		One year.	Two years.	Three years.	Four years.	One year.	Two years.	Three years.	Four years.		
Maine		8,331	131	2,590	1	4,626	141	1,829	3	71,745	56,595
New Hampshire..	167	1,921	25	4,027	.....	492	9	771	28	34,605	30,827
Vermont.....		1,861	18	2,081	11	962	29	534	9	35,246	29,052
Massachusetts....	6,809	6,990	108	24,641	.....	1,533	40	2,153	2	151,785	123,844
Rhode Island.....		1,223	196	891	.....	739	92	618	.....	23,711	17,878
Connecticut.....		495	20	10,318	24	34	5	1,174	2	57,270	50,514
New York.....	5,640	56,968	1,506	25,297	72	9,137	1,616	20,257	67	464,156	381,696
New Jersey.....	769	10,882	540	3,697	.....	6,501	1,075	3,162	155	79,511	55,785
Pennsylvania.....	7,675	42,133	433	12,493	198	26,744	204	3,267	44	366,326	267,558
Delaware.....		1,558	9	593	15	376	5	11	.....	13,651	10,303
Maryland.....	1,297	6,229	246	3,727	64	3,237	430	1,094	.....	49,731	40,692
West Virginia.....		1,726	28	202	.....	2,112	9	351	.....	32,003	27,653
Dist. of Columbia.		998	59	937	343	693	12	116	2	16,872	11,506
Ohio.....	36,254	25,613	761	4,625	.....	21,721	641	926	.....	317,133	237,976
Indiana.....	7,197	17,733	597	7,158	.....	20,736	243	2,259	.....	195,147	152,283
Illinois.....	11,328	13,482	535	1,375	.....	25,835	355	1,620	.....	258,217	212,694
Michigan.....		5,983	57	6,492	.....	6,775	41	1,044	.....	90,119	80,865
Wisconsin.....	2,134	10,921	86	5,832	.....	9,620	15	236	.....	96,118	78,985
Minnesota.....		2,794	205	239	.....	2,691	12	54	.....	25,034	19,675
Iowa.....	3,901	4,062	60	168	.....	771	15	22	.....	75,860	68,182
Missouri.....		7,782	1,295	14,430	.....	3,161	44	1,002	.....	108,773	86,192
Kentucky.....		5,084	169	10,137	.....	1,986	7	5,405	.....	78,540	70,348
Kansas.....	441	29	3	319	.....	623	36	170	.....	20,097	18,654
Tennessee.....					.....				.....	12,077	12,077
California.....					.....				.....	7,451	7,451
Nevada.....					.....				.....	216	216
Oregon.....	*40				.....				.....	617	581
Washington Ter'y					.....				.....	895	895
Nebraska.....do					.....				.....	1,279	380
Colorado.....do					.....				.....	1,762	1,762
Dakota.....do					.....				.....	181	181
New Mexico.do					.....				.....	2,395	1,011
Totals.....	83,652	234,798	7,087	142,269	728	151,105	5,076	48,079	312	2,688,523	2,154,311

*Furnished for four months.

JAMES B. FRY,
Provost Marshal General.

THE NATIONAL ASSOCIATION OF THE DEAF
AND MUTE
OF THE UNITED STATES OF AMERICA

REPORT
OF THE NATIONAL ASSOCIATION OF THE DEAF
AND MUTE
OF THE UNITED STATES OF AMERICA

FOR THE YEAR 1880
AND THE PROGRESS OF THE DEAF AND MUTE
IN THE UNITED STATES OF AMERICA

FOR THE YEAR 1880
AND THE PROGRESS OF THE DEAF AND MUTE
IN THE UNITED STATES OF AMERICA

REPORT.

The National Association of the Deaf and Mute of the United States of America, organized on the 14th of February, 1880, at the National Convention of the Deaf and Mute of the United States of America, held at the Hotel Hamilton in New York City, has the honor to present to the public the following report of its progress during the year 1880.

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STATE OF THE STATE

Department of the Interior, Bureau of Land Management

In the year 1900, the following lands were surveyed and located by the Bureau of Land Management, Department of the Interior, United States of America.

Section	Township	Range	County	State	Acres		Total
					Surveyed	Located	
1	1	1	1	1	100	100	100
2	1	1	1	1	100	100	100
3	1	1	1	1	100	100	100
4	1	1	1	1	100	100	100
5	1	1	1	1	100	100	100
6	1	1	1	1	100	100	100
7	1	1	1	1	100	100	100
8	1	1	1	1	100	100	100
9	1	1	1	1	100	100	100
10	1	1	1	1	100	100	100
11	1	1	1	1	100	100	100
12	1	1	1	1	100	100	100
13	1	1	1	1	100	100	100
14	1	1	1	1	100	100	100
15	1	1	1	1	100	100	100
16	1	1	1	1	100	100	100
17	1	1	1	1	100	100	100
18	1	1	1	1	100	100	100
19	1	1	1	1	100	100	100
20	1	1	1	1	100	100	100
21	1	1	1	1	100	100	100
22	1	1	1	1	100	100	100
23	1	1	1	1	100	100	100
24	1	1	1	1	100	100	100
25	1	1	1	1	100	100	100
26	1	1	1	1	100	100	100
27	1	1	1	1	100	100	100
28	1	1	1	1	100	100	100
29	1	1	1	1	100	100	100
30	1	1	1	1	100	100	100
31	1	1	1	1	100	100	100
32	1	1	1	1	100	100	100
33	1	1	1	1	100	100	100
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41	1	1	1	1	100	100	100
42	1	1	1	1	100	100	100
43	1	1	1	1	100	100	100
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51	1	1	1	1	100	100	100
52	1	1	1	1	100	100	100
53	1	1	1	1	100	100	100
54	1	1	1	1	100	100	100
55	1	1	1	1	100	100	100
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57	1	1	1	1	100	100	100
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63	1	1	1	1	100	100	100
64	1	1	1	1	100	100	100
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67	1	1	1	1	100	100	100
68	1	1	1	1	100	100	100
69	1	1	1	1	100	100	100
70	1	1	1	1	100	100	100
71	1	1	1	1	100	100	100
72	1	1	1	1	100	100	100
73	1	1	1	1	100	100	100
74	1	1	1	1	100	100	100
75	1	1	1	1	100	100	100
76	1	1	1	1	100	100	100
77	1	1	1	1	100	100	100
78	1	1	1	1	100	100	100
79	1	1	1	1	100	100	100
80	1	1	1	1	100	100	100
81	1	1	1	1	100	100	100
82	1	1	1	1	100	100	100
83	1	1	1	1	100	100	100
84	1	1	1	1	100	100	100
85	1	1	1	1	100	100	100
86	1	1	1	1	100	100	100
87	1	1	1	1	100	100	100
88	1	1	1	1	100	100	100
89	1	1	1	1	100	100	100
90	1	1	1	1	100	100	100
91	1	1	1	1	100	100	100
92	1	1	1	1	100	100	100
93	1	1	1	1	100	100	100
94	1	1	1	1	100	100	100
95	1	1	1	1	100	100	100
96	1	1	1	1	100	100	100
97	1	1	1	1	100	100	100
98	1	1	1	1	100	100	100
99	1	1	1	1	100	100	100
100	1	1	1	1	100	100	100

Total number of acres surveyed and located by the Bureau of Land Management, Department of the Interior, United States of America, in the year 1900, 10,000 acres.

Bureau of Land Management, Department of the Interior, United States of America.

JAMES H. FAY,
Chief of Bureau.

MEMORIAL EXERCISES ON THE LIFE AND CHARACTER OF
ABRAHAM LINCOLN.

FEBRUARY 16, 1866.—Laid on the table and ordered to be printed.

Mr. E. B. WASHBURNE, from the Select Committee of one from each State represented, on the death of President Lincoln, made the following

R E P O R T.

In pursuance of the concurrent resolutions of the two houses of Congress on the 12th of February instant, the chairman of the joint committee of arrangements on the memorial exercises of the late President of the United States, Abraham Lincoln, have placed a certified copy of said concurrent resolutions in the hands of the Hon. George Bancroft, and have requested of him a copy of his address on the occasion referred to, for publication, as will appear from the following correspondence, which I move be read, and that it lie on the table and be printed.

THE CAPITOL, WASHINGTON, *February* 13, 1866.

SIR : We have the honor to present to you an official copy of two concurrent resolutions adopted by the Senate and House of Representatives on the 12th instant, expressing the thanks of Congress for the appropriate memorial address delivered by you on the life and services of Abraham Lincoln, late President of the United States, and instructing us to request from you a copy of the address for publication.

Having shared the high gratification of hearing the address, we take pleasure, in accordance with the second of the concurrent resolutions, in requesting you to furnish a copy of the address for publication.

We have the honor to be, with very great respect, your obedient servants,
SOLOMON FOOT,

Chairman on the part of the Senate.

E. B. WASHBURNE,

Chairman on the part of the House.

Hon. GEORGE BANCROFT.

WASHINGTON, D. C., *February* 14, 1866.

GENTLEMEN : I have received your letter of yesterday, and a copy of the two concurrent resolutions of Congress, to which you refer. The thanks of the Senate and House of Representatives for the performance of the duty assigned me I value as a very distinguished honor, and I shall cheerfully furnish a copy of the address for publication.

I remain, gentlemen, very sincerely yours,

GEORGE BANCROFT.

Hon. SOLOMON FOOT,

Chairman on the part of the Senate.

Hon. E. B. WASHBURNE,

Chairman on the part of the House.

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WASHBURN vs. VOOHEES.

FEBRUARY 19, 1866.—Laid on the table and ordered to be printed.

Mr. DAWES, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the memorial of Henry D. Washburn, contesting the right of the Hon. Daniel W. Voorhees to a seat in this House as a representative from the seventh congressional district of Indiana, submit the following :

The election here contested was held on the second Tuesday of October, 1864, in the seventh congressional district of Indiana, composed of the counties of Parke, Vermillion, Vigo, Clay, Putnam, Greene, Owen, and Sullivan. The entire record of the case will be found in Mis. Doc. No. 11 of the present Congress. The following is the official canvass :

	Daniel W. Voorhees.	Henry D. Washburn.
Vote of Clay county.....	1, 406	1, 089
Vote of Greene county.....	1, 466	1, 262
Vote of Owen county.....	1, 544	1, 086
Vote of Parke county.....	1, 210	2, 113
Vote of Putnam county.....	2, 112	2, 076
Vote of Sullivan count.....	2, 181	750
Vote of Vermillion county.....	696	1, 064
Vote of Vigo county.....	2, 215	2, 856
	12, 830	12, 296

Showing an official majority for Mr. Vorhees, the sitting member, of five hundred and thirty-four.

The notice of contest contains fourteen specifications of alleged illegal voting; illegal and fraudulent conduct of officers of election; illegal and fraudulent tampering with ballot-boxes, and false returns of the actual number of votes cast at the voting precincts in a large number of towns in the counties of Sullivan,

Vigo, and Putnam. But no testimony was taken in support of these allegations, except in respect to some voting precincts, viz., that at Hamilton, in Sullivan county, that at Jefferson, in the same county, that of Riley, in Vigo county, and that of Cloverdale, in Putnam county.

The answer of the sitting member denies all of the allegations of the contestant in his notice, and alleges in return like illegal voting for the contestant, and other frauds committed in the interest of the contestant. But as the sitting member took no testimony in support of his allegations, there will be no further occasion to consider his answer.

At the commencement of the hearing before the committee the sitting member made a motion to upset the entire testimony taken by the contestant, because, as he alleged, it had not been taken before a person authorized by law to take the same. It was taken before Albert Lange, mayor of the city of Terre Haute, in the county of Vigo, in said district, but was not taken in the city of Terre Haute, but in the towns of Sullivan, Sullivan county, Cloverdale, Putnam county, Carlisle, Sullivan county, and Lockport, Riley township, Vigo county. The statute of the United States, under which these proceedings are conducted, contains (Stat. at Large, vol. 9, p. 568) the following provision:

"That when any such contestant or returned member shall be desirous of obtaining testimony respecting such election, it shall be lawful for him to make application to any judge of any court of the United States, or to any chancellor, judge, or justice of a court of record of any State, or to any *mayor*, recorder, or intendant of any town or city in which said officer shall reside, within the congressional district in which such contested election was held, who shall thereupon issue his writ of subpoena, directed to all such witnesses as shall be named to him, requiring the attendance of such witnesses before him, at some time and place named in the subpoena, in order to be then and there examined respecting the said contested election, in the manner hereinafter provided."

But the statutes of Indiana (G and H, vol. 2, p. 576) confer authority to administer oaths upon a mayor of a city only within the city of which he is mayor; and it is contended by the sitting member that the oath administered by the magistrate, in taking these depositions, was administered by virtue of his office of mayor, and therefore, when administered outside of the city of Terre Haute, was administered without authority. But the committee were of opinion that the authority to take these depositions was derived, not from the statutes of Indiana, but from the statute of the United States already cited—the mayor of a city being one of the persons designated in that statute to take such depositions, and that he would have been authorized, as such designated person, to take these depositions had the statutes of Indiana conferred upon him no power to administer oaths. Indeed, the power to administer oaths within their respective cities was not conferred by the statutes of Indiana at all upon mayors till the year 1861. (See Indiana Statutes, 2d vol., Gavin and Hord, p. 576.) Yet, during all the time since the passage of the United States act of 1851, before cited, the mayor of any city within the district has been a person designated to take depositions in a case of contested election. The committee, therefore, denied the motion to reject the testimony.

The allegations of fraud made by the contestant against the poll in the aforesaid voting precincts of Hamilton, Jefferson, Cloverdale and Riley are as follows: (Mis. Doc. 11.)

Third. At the voting precinct of Hamilton township, in the county of Sullivan, in said district, a large number of the ballots or tickets with my name upon them, and which had been voted for me, (the exact number I do not know and cannot state,) were secretly, corruptly, and illegally taken from the ballot-box, after the same had been deposited there, by some person or persons unknown to me, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, (the exact number of which I do not know

and cannot state,) were unlawfully and fraudulently put into said ballot-box, and were afterwards counted for you by the inspector and judges of election at said precinct, so that it is impossible to tell how many legal votes were given for you at said precinct; wherefore the election at said precinct was and is wholly void.

Fourth. The inspector and judges of election at the precinct of Hamilton, in the county of Sullivan, in said district, illegally announced, as the result of the voting at said precinct, that *five hundred and one* votes had been cast for you, and that only *one hundred and forty-three* votes had been cast for me; whereas, in point of fact, the said number of votes had not been cast for you, but, on the contrary, at least *two hundred and fifty* of the votes polled at said precinct were cast for me, and a large number of the ballots or tickets containing said votes so cast for me were illegally and fraudulently taken out of the ballot-box of said precinct, where they had been deposited by the inspector and judges of election, by some person or persons unknown to me, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, were then placed in said ballot-box illegally and fraudulently in the place thereof, and were afterwards illegally counted for you by said inspector and judges; wherefore the election at said precinct was and is wholly void.

Fifth. At the election precinct of the township of Hamilton and county of Sullivan, in said district, there were at least *two hundred and fifty* votes cast for me; and after the polls had been closed at said precinct the ballot-box, containing the ballots or tickets voted at said precinct, was secretly and fraudulently opened, after it had been locked by the inspector and judges of election of said precinct, by some person or persons unknown to me, and a large number of the ballots or tickets so voted for me, and with my name upon them, were removed fraudulently and illegally from said ballot-box before the vote of said precinct was counted, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, were fraudulently put into said box, and were afterwards illegally counted for you by the inspector and judges of election at said precinct; wherefore the election at said precinct was and is wholly void.

* * * * *

Eighth. At the voting precinct of Jefferson township, in the county of Sullivan, in said district, a large number of the ballots or tickets with my name upon them, and which had been voted for me, were secretly, corruptly, and illegally taken from the ballot-box, after the same had been deposited there, by some person or persons unknown to me, and a large number, at least *fifty* ballots or tickets, with your name upon them, and which had not been voted for you, were unlawfully and fraudulently put into said box, and were afterwards counted for you by the inspector and judges of the election at said precinct; wherefore the election at said precinct was and is wholly void.

* * * * *

Tenth. At the voting precinct of Riley township, in the county of Vigo in said district, a large number of the ballots or tickets with my name upon them, and which had been voted for me, to at least the number of *twenty-five*, were secretly, corruptly, and illegally taken from the ballot-box after the same had been deposited there, by some person or persons unknown to me, and a like number of ballots or tickets with your name upon them, and which had not been voted for you, were unlawfully and fraudulently put into said box, and were afterwards counted for you by the inspector and judges of the election at said precinct; wherefore the election at said precinct was and is wholly void.

Eleventh. At the voting precinct of Cloverdale township, in the county of Putnam, in said district, a large number of the ballots or tickets with my name upon them, and which had been voted for me, (the exact number of which I do not know and cannot state,) were secretly, corruptly, and illegally taken from the ballot-box after the same had been deposited there, by some person or per-

sons unknown to me, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, (the exact number of which I do not know and cannot state,) were unlawfully and fraudulently put into said ballot-box, and were afterwards counted for you by the inspector and judges of election at said precinct, so that it is impossible to tell how many legal votes were given for you at said precinct; wherefore the election at said precinct was and is wholly void.

Twelfth. The inspector and judges of election at the precinct of Cloverdale township, in the county of Putnam, in said district, illegally announced, as the result of the voting at said precinct, that only *sixty-one* votes had been cast for me; whereas, in point of fact, at least *one hundred and thirty* of the votes polled at said precinct were cast for me, and a large number of the ballots or tickets containing said votes so cast for me were illegally and fraudulently taken out of the ballot-box of said precinct, where they had been deposited by the inspector and judges of election, by some person or persons unknown to me, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, were then placed in said ballot-box illegally and fraudulently, in the place thereof, and were afterwards illegally counted for you by said inspector and judges; wherefore the election at said precinct was and is wholly void.

Thirteenth. At the election precinct of Cloverdale township, in the county of Putnam, in said district, there were at least *one hundred and thirty* votes cast for me; and after the polls had been closed at said precinct, a large number of the ballots or tickets containing these votes, and with my name upon them, were secretly, corruptly, and fraudulently removed from said ballot-box, by some person or persons unknown to me, before the vote of said precinct was counted, and a large number of ballots or tickets with your name upon them, and which had not been voted for you, were illegally and fraudulently put into said box, and were afterwards illegally counted for you by the inspector and judges of election at said precinct; wherefore the election at said precinct was and is wholly void.

It was claimed by the contestant that, in respect to the four voting precincts before mentioned, he had, under the various forms of allegation here set forth, proved in the record submitted to the committee, and printed in Mis. Doc. No. 11, fraud and error to such an extent as to call for the rejection of the return of the election officers altogether, as untrue, and to justify a resort to other evidence to ascertain the vote at these several precincts. There was little dispute before the committee as to the law which should govern this case. It is laid down as a general principle by Cushing, in his treatise on "The Law and Practice of Legislative Assemblies," p. 72, that "if returning officers act in so illegal or arbitrary manner as to injure the freedom of election the whole proceedings will be void." In a late case in the courts of law—that of *Mann vs. Cassidy*, for the office of district attorney, in the city of Philadelphia—the court in giving its opinion say: "As the case now stands before us, we should be derelict in our duty did we not unhesitatingly express our conviction that the officers in the election divisions to which we have referred, in the receipt and recording of votes, are so utterly and entirely unreliable that the truth cannot be deduced from any records or returns made by them in relation thereto." * * * "The entire proceedings were so tarnished by the fraudulent conduct of the officers charged with the performance of the most solemn and responsible duties, that it would have been not only abundantly justified, but it would have been our plain duty, to throw out the returns of every division to which we have referred."

The same doctrine has been repeatedly laid down by committees of elections in the House of Representatives. (See *Blair vs. Barrett*, *Bartlett Contested Elections*, p. 308; *Knox vs. Blair*, *ibid.*, p. 520, and cases there cited. See, also, *Kneas's case*, *Parson's Select Cases*, p. 553, and *Howard vs. Cooper*, *Bartlett*, p. 275.) Indeed, the rule laid down in the latter case at page 526 was ac-

cepted by both parties as the law which should govern this case, and they took issue upon the facts. The rule is in these words :

"When the result in any precinct has been shown to be 'so tainted with fraud that the truth cannot be deducible therefrom,' then it should never be permitted to form a part of the canvass. The precedents as well as the evident requirements of truth not only sanction but call for the rejection of the entire poll when stamped with the characteristics here shown."

Indeed, the proposition is too plain to admit of dispute. To hold as true that which is so false and fraudulent that the truth cannot be deduced therefrom, is to hold to an absurdity. The rule here laid down is none other than the postulate that, that which is false cannot be true. In adopting this rule the committee do not lose sight, however, of the danger which may attend its application. Wholesome and salutary, not less than necessary, in its proper use, it is extremely liable to abuse. Heated partisanship and blind prejudice, as well as indifferent investigation, may under its cover work great injustice. It is not to be adopted if it can be avoided. No investigation should be spared that would reach the truth without a resort to it. But it is not to be forgotten or omitted if the case calls for its application. If the fraud be clearly shown to exist to such an extent as to satisfy the mind that the return does not show the truth, and no evidence is furnished by either party to a contest, and no investigation of the committee enable them to deduce the truth therefrom, then no alternative is left but to reject such a return. To use it under such a state of facts, is to use as true what is shown to be false.

The committee have applied this rule to the testimony offered by the contestant in support of his allegations touching these four precincts, with a full conviction of the character of the rule, and of the caution incumbent upon them in its use; and they now submit the conclusions to which they have arrived under its operation to the judgement of the House.

The statutes of Indiana governing elections may be found in the volumes already referred to, (Gavin & Hard) vol. 1, at pages 307, 309, 311, 637, and provides that in April, annually, the electors of each township shall elect a "township trustee," who by virtue of such office becomes "inspector of elections" for said township; designates the place where elections shall be held in the same, and appoints, with the consent of a majority of the legal voters who may happen to be present at the opening of the polls, two qualified voters of the precinct who, with himself, shall constitute a board of judges of such election. The ballot-box is provided with a "sufficient lock," and must be locked before the opening of the polls, and the key delivered to one of the judges. An opening is made in the lid of the box, closed with an inside slide. As soon as the election shall have closed, or at any time after the counting has commenced, the board of judges may adjourn the count till the next day, at which time it shall be completed. When such an adjournment takes place, the poll-lists and tally-papers are placed in the ballot-box, with the ballots, which is then locked, and the aperture for receiving ballots sealed. The key is then given to one of the judges, and the box is taken by the inspector, and both are reproduced by them respectively at the time and place of the adjournment, when the count is completed and a return thereof then made by these same judges. There is also provision for an adjournment of one hour for dinner.

The committee were struck with the loose and ineffectual manner in which the ballot-box was guarded against fraud by those provisions. There is not the slightest provision for its examination before proceeding with the voting, for its protection during the intermission, or during the night after election. When an adjournment of the board takes place before completing the count, if the box is only "kept" by the inspector, it matters not how or where. However honest he may be himself, the law has thrown around the box no safeguard against any fraud that might be practiced upon it by others. It even provides for an intermission of an hour in the midst of the heat of the election, and when the poll will

be most likely to be surrounded by excited and unscrupulous politicians, and yet fails to make the slightest provision for the safe-keeping of the box during that time. In like manner it provides for an adjournment of the board after the election is over and before the count is completed or began. Thus time is given to learn whether the poll in question, or other polls, are close, so that if there existed a disposition to commit a fraud, opportunity strengthens inclination. And yet the inspector may take the box with him and travel during the night, or stop and visit with it a friend till morning—any distance from the voting place, and where those from other voting places congregate. The committee would refrain from animadverting upon the character of State legislation beyond its immediate connexion with the subject-matter of their investigation. They believe that the pertinancy of these remarks will be apparent as the testimony before the committee shall be examined. To this the attention of the House is now directed, in the order in which it will be found in the document (Mis. No. 11) already referred to.

HAMILTON TOWNSHIP.

The official return from this township was (p. 7) for Mr. Voorhees, 498; for Mr. Washburn, 143. The allegation of the contestant is, that the ballot-box at this precinct had been tampered with, so that the return does not state the true poll, and that the whole proceeding was "so tainted with fraud that the truth cannot be deduced therefrom;" and he accordingly demands, in accordance with the rule already stated, that the return be set aside. The evidence offered in support of this allegation will be found, pp. 8-49, inclusive, and is of two kinds: first, to show how many voters actually cast their votes at this precinct for the contestant; and secondly, evidence tending to show an actual tampering with the ballot-box after the close of the polls and before the count was completed. The evidence satisfies the committee that one hundred and seventy men at least voted for the contestant at this precinct. One hundred and sixty-four witnesses testified to their own votes for him, and as to the remaining six not present, the testimony of witnesses that they knew the vote of each to be also for the contestant, left the committee entirely satisfied that this number at least had so voted. There was testimony tending to the same result as to several others, but not sufficiently positive to satisfy the committee. Here is thus shown a discrepancy between the official return for the contestant and the proof of the vote actually cast for him, at this precinct alone, of twenty-seven votes. There was no attempt to show the discrepancy between the vote actually cast for the sitting member, and the vote returned for him, nor was any attempt on part of the sitting member made to explain this discrepancy in the vote for the contestant.

The tally-list would have shown whether these men had actually voted or not, and their old political associations and professions, if in conflict with their testimony, were legitimate evidence to contradict them. The tally-list would also have revealed, if true, four hundred and ninety-eight other names, if so many votes had been also actually cast for the sitting member, and some approximation to that number might have been found to have so testified. But the case was permitted by the sitting member to rest upon the uncontradicted testimony of the witnesses before stated, and the committee left to the conclusion to which that testimony, uncontrolled, must lead them.

In addition to this, the contestant offered testimony tending directly to show an actual tampering with the ballot-box at this precinct. This evidence will be found in Mis. Doc. No. 11, pp. 45-50, inclusive, and the attention of the House is called to it as there recorded in full. From this testimony it appears that at the opening of the polls in the morning a strenuous but ineffectual effort was made by the friends of the contestant to secure the appointment of one of their number as one of the officers of the election. This was resisted by the friends of the sitting member present at the polls. When several names were

proposed for this purpose, a Mr. Hansil leading in the opposition to it, got up on a store box and spoke in very violent language against the one proposed. Another was then proposed, "or some other friend of the contestant." But "Mr. Hansil replied that he would not trust either of the men proposed, or any other black abolitionist on the board." And so the board of three judges and two clerks was composed of all strong partisans of the sitting member. In this there was no violation of the letter of the law, but what subsequently happened to the ballot-box was made easy by the transaction, and it deserves notice in that connection alone. When the polls were closed at night, this board began the count about dusk, and counted some fifteen or twenty votes, stringing them upon a string as required by law.

They then adjourned for supper, first putting the string of votes in the box on top of the uncounted votes, and the poll-books and tally papers on top of them. The box was locked and a key given by the inspector to one of the judges. The box was then left on the table in the voting room, and the officers were all gone about an hour to their supper, leaving the box, they knew not in whose presence or to what treatment. On their return, the key handed by the inspector to one of the judges would not unlock the box. Another was tried without success, when the inspector took a key from his pocket which unlocked the box. On opening the box and taking out the poll-books and tally papers, the string of counted tickets which had been placed on top of the uncounted tickets was not there, and considerable search was made for it. It was at last found at the bottom of the box, under the uncounted tickets. The board of election officers, a few days after the election, published a card respecting this matter, which is here inserted entire:

"A CARD.—We, the undersigned, judges and clerks of the election held at the court-house in Sullivan on the 11th day of October, 1864, in view of the frauds alleged to have been perpetrated, and in justice to ourselves, avail ourselves of this the first opportunity offered to make the following statement:

"Of the frauds charged we know nothing. We saw no act of impropriety by any member of the board while in session; but that we are satisfied in our own minds that such charges are not without foundation, and we have such opinion upon the following circumstance, to which we are willing at any and all times to be qualified: At the adjournment of the board for supper, which was about dusk, we had counted out between fifteen and twenty tickets, which were strung on a string prepared for that purpose. The string of tickets was placed in the ballot-box on top of the uncounted tickets. The poll-books and tally-papers were then placed on top of the tickets, the box locked, and set on a table in one corner of the room.

"When the board met, after supper, the ballot-box was unlocked in our presence by the inspector, the tally-papers and poll-books taken out, but the string of counted tickets could not be seen. The inspector turned to the table in the corner of the room to search for it, and while thus engaged we found the string of tickets in the bottom of the ballot-box, completely covered by uncounted tickets. We are satisfied that the string of tickets could not have got to the bottom of the ballot-box without the same being opened in our absence and the tickets handled.

"Respectfully submitted.

"PORTER BURKS,
"JAMES A. BEARD,
" *Judges.*

"DANIEL LANGDON,
"BENJ. HAVENS,
" *Clerks.*

"I hereby certify that I believe the above statement to be correct. When the box was opened after supper I took out the poll-books and tally papers, but could not find the string of tickets. Supposing they had been left out, I turned to look for them; meantime they were found in the box. It is evident that they were moved while the board was adjourned for supper.

"Respectfully,

"W. C. GRIFFITH, *Inspector*.

"OCTOBER 19, 1864."

The committee do not deem further comment upon this poll necessary. The discrepancy of twenty-seven votes between the return (143) for the contestant, and the number (170) proved to have voted for him; the violent partisan character of all the officers of election adversely to him; the steady purpose of keeping the box in such hands; the leaving it for an hour after dusk at the voting place unguarded and exposed; and finally the evidence that the box had been opened and an indefinite number of votes changed or abstracted, disclosed by the judges themselves—all compel to the conviction that "the truth cannot be deduced from this return," and it is accordingly rejected.

But the rejection of a return does not necessarily leave the votes actually cast at a precinct uncounted. It only declares that the return having been shown to be false shall not be taken as true, and the parties are thrown back upon such other evidence as is in their power to show how many voted and for whom, so that the entire vote, if sufficient pains be taken and the means are at hand, may be shown, and not a single one be lost, notwithstanding the falsity of the return. (See *Blair vs. Barrett*, Bartlett's Contested Election Cases, pp. 313, 321; *Clark vs. Hall*, *ibid*, 215.) It was proved, as has already been stated, that one hundred and seventy votes were cast at this precinct for Mr. Washburn. There was also the testimony of four persons that they voted for Mr. Voorhees.

CLOVERDALE.

The official returns from this township gave Mr. Voorhees 276 votes and Mr. Washburn 58 votes. The testimony is found in said Mis. Doc., pp. 53-70, inclusive, and is of precisely the same character as that already commented upon in connexion with the township of Hamilton. All the authorities and the law applicable to such testimony thus cited are equally applicable here. It is proved that 91 persons voted at this precinct for Mr. Washburn, while only 58 were returned for him. It seems to the committee hardly possible that so large a discrepancy in so small a voting precinct could have been the result of mistake. In this precinct, the count was not made till the next day. In the mean time the inspector took the box and carried it away out of town, from half to three-fourths of a mile from Cloverdale, to the house of a friend, a warm supporter of the sitting member, where he spent the night with it and brought it back the next day, when the votes were counted and the foregoing return made out. There is no direct testimony that anything was done with the box during the night. But it is in evidence that the vote in the whole county was very close, there being, as returned, only twenty-six majority for the sitting member, less than the discrepancy (33) found at this poll. The county ticket was therefore in danger. A strong supporter of the sitting member by the name of Scott, (p. 69,) came from the county seat that night, a distance of ten miles, to the house where the ballot-box was kept, about three-fourths of a mile from the town, after the owner of the house had gone to bed and had fallen asleep, and spent the night there. The owner of the house testified that he did not know at what time he came, what he came for, and what he did. And his purpose and business, as well as the success which attended it, only appear from the testimony of a witness who overheard him afterwards relate it. But, this was hearsay evidence, which the committee rejected. The case against this ballot-box, there-

fore, rests upon the great discrepancy between the return (58) and the number (91) proved to have voted for Mr. Washburn, the temptation in the close vote in the county, the opportunity for tampering with the ballot-box during the night, and the suspicious visitation of Scott from the county seat during the night, together with such inferences as it is fair to draw from the fact that no witness is contradicted, no testimony is controverted, no suspicious circumstance explained, so easy of explanation by the calling of Scott or the inspector, if the truth permitted it. But as the result to which the committee arrived upon the whole case, as hereafter stated, would not in any aspect be changed, whether this return be rejected or corrected, they did not determine to reject it entirely, however much confidence in it must be shaken in every fair mind by the evidence here adduced. They, instead, gave the contestant the benefit of the discrepancy proved—viz., 33 votes.

JEFFERSON TOWNSHIP.

The official return from this township was (p. 7,) for Mr. Voorhees, 236 votes; for Mr. Washburn, 24 votes. The evidence relied on to show fraud in this return (pp. 73–80, inclusive) consists wholly in a discrepancy proved between the vote actually cast and that returned for the contestant. It is shown in this record, by the testimony of the voters themselves and those who knew how others absent voted, that thirty-six instead of twenty-four, the returned number, voted for Mr. Washburn. There was no other testimony to show fraud in this ballot-box as the testimony was left by the parties. The committee had the evidence furnished them of correcting all the errors shown, however that might have arisen. They, therefore, did not reject, but corrected this return, giving to the contestant the benefit of the twelve votes here proved and not counted.

RILEY TOWNSHIP.

The official return from this township (p. 7) was for Mr. Voorhees, 173 votes; for Mr. Washburn, 88 votes. The testimony (pp. 81–102 inclusive) is similar in character to that already commented upon in connexion with other townships.

This testimony shows that there were one hundred and eight persons at least who voted at this precinct for the contestant, while eighty-eight votes only were returned for him. There were six others who were political friends of the contestant, who were proved to have voted at this precinct, but for whom it did not appear beyond their political associations. This was a small precinct, only two hundred and sixty-one votes in all were returned from it. It seemed hardly possible that there could have been an honest mistake of twenty in a vote of eighty-eight. But there was additional evidence touching this ballot-box. On the day of voting the board adjourned for dinner, and dined with the inspector. During the dinner, the ballot-box was placed in the front bed-room, adjoining the dining-room, and opening into another back bed-room. After dinner was over, and while the remainder of the board were busying themselves in the dining-room with some outline maps, the inspector went into the bed-room where the ballot-box was and shut the door. He was gone about fifteen minutes. The next morning, on opening the door into the back bed-room, from the one where the ballot-box and the inspector were the day previous, the servant girl could not swing the door back, and on looking behind it, she discovered that a nail had been taken out of the carpet behind the door, and “a quantity of republican votes” put under the carpet. She did not know how they came there, nor how many they were, but sufficient to prevent the opening of the door. During the count of the votes, after the polls were closed, and after all the votes in the ballot-box had been taken out, it was ascertained that the tally-papers did not show

as large a number of votes as the poll-books by four or five, and there were no more in the ballot-box to count, so some loose votes were picked up off from the table and counted to supply the deficiency in the number of votes as shown by the poll-books, and still they were one short. Where these votes came from or for whom they were did not appear. It was testified that they did not come out of the box. Neither of these transactions, nor the large discrepancy in the vote before alluded to, was the subject of explanation by the sitting member. He met this testimony by no countervailing testimony. There was no attempt to account for the votes under the carpet nor for the business of the inspector shut up with the ballot-box in the bed-room, nor whence came the votes picked up from the table and counted. The inspector himself was not even called to repel the accusation which this testimony brought to his door. But the sitting member was content to leave the whole testimony unexplained, and the committee to such inferences as are inevitable from the absence of any explanation of testimony of this character. The committee were compelled to the conclusion that this box also had been opened, and votes, no one could tell how many, abstracted therefrom; and that other votes, never in the box, had been counted. No one could tell for whom; and consequently there existed fraud in this return to such a degree that the truth could not be induced therefrom. They therefore rejected it. One hundred and eight persons, as before stated, were proved to have voted at this precinct for the contestant, and were counted for him by the committee. It only remains to state the conclusions to which the committee have thus arrived on the whole case.

By the official canvass the vote stood as follows :

For Mr. Voorhees.....		12,830	
Deduct from this rejected return from Hamilton...	498		
Ditto from Riley.....	173	671	
		12,159	
Add votes proved to have been cast for him in Hamilton		4	
			12,163
Official canvass for Mr. Washburn.....		12,296	
Deduct from this rejected return from Hamilton..	143		
Ditto from Riley.....	88	231	
		12,065	
Add votes proved to have been cast for him in Hamilton	170		
Ditto in Riley.....	108		
Discrepancy proved in Cloverdale.....	33		
Ditto in Jefferson	12	323	
			12,388
Majority for Mr. Washburn.....			225

If, however, the return from Hamilton alone, where the judges themselves confess that the ballot-box had been opened, be rejected, and the discrepancies in the other townships between the returns and the votes actually cast be simply corrected, then the conclusion would be the same, and the result would then be as follows :

Official return for Mr. Voorhees.....	12, 830	
Deduct from this rejected return from Hamilton	498	
	12, 332	
Add votes proved to have been cast for him at Hamilton.....	4	
		12, 336
Official return for Mr. Washburn	12, 296	
Deduct from this rejected returns from Hamilton.....	143	
	12, 153	
Add votes proved to have been cast for him at Ham- ilton.....	170	
Add discrepancy proved in Riley.....	20	
Add discrepancy proved in Jefferson.....	12	
Add discrepancy proved in Cloverdale	33	
		235
		12, 388
Majority for Washburn		
		52

The committee therefore recommend the adoption of the following resolutions :

Resolved, That the Hon. Daniel W. Voorhees is not entitled to a seat in this House as a representative from the seventh district of Indiana in the 39th Congress.

Resolved, That Henry D. Washburn is entitled to a seat in this House as a representative from the seventh congressional district of Indiana in the 39th Congress.

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WASHBURN vs. VOORHEES.

FEBRUARY 19, 1866.—Ordered to be printed.

Mr. MARSHALL, from the Committee of Elections, submitted the following as the views of the minority :

The undersigned, having examined carefully the evidence in this case, have arrived at the conclusion that the Hon. Daniel W. Voorhees was duly elected a representative to the thirty-ninth Congress, and is entitled to retain the seat he now holds. Before going into the merits of the case, we will very briefly notice a preliminary question. Mr. Voorhees insists that there is no legal evidence in behalf of the contestant in the case, or before the House; that Albert Lange, as mayor of the city of Terre Haute, had no authority in law to go out of his city and county, and take the depositions of witnesses outside of his city; that, having no authority there to swear witnesses, the witnesses were not, in fact, sworn at all, and consequently there is no legal evidence whatever in the case. We believe that the law in this matter is with the sitting member. The only authority that said mayor has by the laws of Indiana to administer oaths is derived from section 1 of the act of March 9, 1861, which provides "that justices of the peace in their respective counties, notaries public, judges of courts in their respective jurisdictions, mayors of towns and cities *in their respective towns and cities*, * * * be hereby authorized to administer oaths generally, pertaining to all matters wherein an oath is required." (2 Gavin and Hord's Indiana Statutes, p. 577.) And there is no act of the legislature and no law of Congress conferring upon the mayor of a town or city power to administer oaths outside of the limits of his town or city. No one can doubt that an oath administered by a person without authority is a void act. It imposes no legal obligation on the person swearing to state the truth, nor is it punishable under any law for swearing falsely in such a case. It is admitted that the legislature of a State, as well as Congress, may authorize any person by name, or by their official designation, to administer oaths in all cases required under the laws of their respective governments. But in this case no such power is given, and the witnesses are, in fact, not sworn at all. We, however, merely state the point, and leave it for the consideration of House. We cannot now enter into the argument on the subject.

Admitting that the evidence in the case was taken by an officer authorized by law to swear the witnesses, and to receive and certify the evidence, (which, however, we deny,) we are wholly unable to comprehend upon what possible ground the majority of the committee have come to the conclusion that Mr. Washburn, the contestant, was duly elected and is now entitled to the seat he claims in this House. Mr. Voorhees, the sitting member, was, by the proper canvassers, declared duly elected by a majority of five hundred and thirty-four votes. The returns upon which this result was declared were all made by the duly authorized and sworn officers of the law. And these solemn returns, and this solemnly authenticated evidence, cannot be set aside or overthrown by mere clamor and suspicions unworthy to be called judicial evidence, sufficient to establish fraud, unless we are prepared to disregard all the precedents of the past, and establish one now which will weaken, if not utterly destroy, every guaranty by which a member of a minority party holds his seat in this House. Ma-

majorities should not in the day of their triumph and their pride break down those barriers and weaken those guaranties by which minorities are enabled under the Constitution to defend and protect themselves and their rights, lest the flood of error and wrong thus introduced shall sweep away in its resistless torrent every vestige of republican and representative government.

To overcome the large majority by which Mr. Voorhees was declared elected, the contestant charges that in four townships in their congressional district, to wit: Riley township, in Vigo county, Hamilton and Jefferson townships, in Sullivan county, and Cloverdale township, in Putnam county, and said district, great frauds were perpetrated, as follows: First, that large numbers of illegal and fraudulent voters in said townships cast their votes at said election for the sitting member, D. W. Voorhees.

Second, that large numbers of ballots lawfully cast by legal voters at said election, in said townships, for the said contestant, were illegally and fraudulently taken out of the ballot-boxes and destroyed, and were never counted or returned for Mr. Washburn, the contestant.

Third, that large numbers of ballots with the name of Mr. Voorhees thereon, that had never been voted, were illegally and fraudulently put into the ballot-boxes, and substituted for those for Mr. Washburn that had been destroyed; and that such fraudulently substituted votes were, by the judges and inspectors, counted and returned for Mr. Voorhees, and aided in making up the majority by which he was returned as elected.

Fourth, that the election in all these townships was so illegally and fraudulently conducted, and is so tainted with fraud that the election in said precincts were and are wholly void.

I give the substance and gist of the specifications and charges, and confine them to the townships aboved named for the reason that there is no attempt to prove any fraud or irregularity in any other township in the district.

Of the truth of the larger part of the charges above set forth there is not even a shadow of evidence; there is not a particle of proof, or an attempt to prove that a single person in the whole district who cast his vote for Mr. Voorhees was not a legal voter and entitled to vote in the township where his ballot was deposited. There is not a particle of proof, or a shadow of proof, that a single ballot for Mr. Voorhees that was not voted was by fraud or otherwise put into the ballot-box and counted for him.

There is no proof that ought to be considered for one moment as sufficient to overturn and destroy the solemnly declared returns of an election, that any one of the judges, inspectors, or officers of election in said townships, were guilty of fraud or malversation in the discharge of the duties of their offices.

And it is only by inference, without sufficient evidence, that it can be argued that ballots cast in said townships for the contestant, were in any manner taken from the ballot-boxes, before they were counted and the returns made.

There is a great deal of evidence taken for the purpose of proving that a considerable number of votes were cast in each of the above named townships for Mr. Washburn that were not counted or returned for him. This evidence is offered for a twofold purpose. First. As tending to prove fraud in the election, and thereby to render the election in said townships utterly null and void. And secondly, to increase the vote of the contestant over the vote returned for him. We will therefore consider briefly the evidence relied upon to prove that more votes were cast for the contestant than were counted and returned for him by the judges and inspectors of the election.

In Hamilton township, Sullivan county, Mr. Voorhees, received four hundred and ninety-eight votes, and Mr. Washburn received one hundred and forty-three votes, as returned by the inspector and judges of said township. Mr. Washburn has examined a great many witnesses to show that he received at that township more votes than were thus returned for him. And giving a very

liberal construction to this evidence we find that there is testimony tending to prove that he received at the poll in said township one hundred and sixty votes, being seventeen votes more than were returned for him by the inspector and judges. But to make up this additional seventeen votes we have to count the votes of twenty men who swear that they voted for Mr. Washburn, but who themselves cannot write their names, but merely make their mark, to wit: Christopher K. Boone, John Gilkerson, Solomon Walls, Luke Lucas, William B. Patten, Thomas Johnson, Peter Moore, Champion Shelburn, Christian Canary, Thomas Phipps, Pleasant Boles, William Canary, Robert Canary, Alfred Frinkle, Jacob B. Miller, William R. Gardner, Isaac Hildebrand, Vineyard Stark, Absalom Gentry and John A. Watson; and also of one person (Hanson Keen) who was not produced or sworn, but whose vote was sworn to by another person. When it is remembered that the votes were given by ballot, and how easily any one may be deceived as to how those around him vote, and how easily the voter who cannot read or write may himself be deceived in regard to the character of his ballot, it must be conceded that this evidence is of a very weak and unsatisfactory character, and that we cannot feel at all certain that a single vote was cast at that poll for Mr. Washburn more than were actually counted and returned for him by the inspector and judges.

In Cloverdale township, Putnam county, there were cast for Mr. Voorhees (226) two hundred and twenty-six votes, and for Mr. Washburn (58) fifty-eight votes. The contestant has produced evidence tending to prove that at said poll he received (89) eighty-nine votes, being (31) thirty-one more than were returned for him by the inspector and judges. But to make up this number we have to count the votes of ten (10) persons, to wit: George W. Dicks, Francis Mullinix, Job Allee, William Leonard, Abraham H. Snodgrass, Andrew Finley, Elisha I. Baldwin, William Minet, William Day, and C. W. Dicks, who testify that they voted for Mr. Washburn, but who cannot themselves write their names; and of twelve (12) others, to wit: Elza Thompson, David Thompson, Payton Albin, Harrison Young, John A. Cross, James H. McCoy, John G. Dyer, Hugh Thompson, William B. Ferguson, David W. Dunkin, Israel Jenkins, and John Dicks, junior, who were not produced or sworn, but whose votes were testified to by other persons; this being clearly secondary evidence, of a very weak and unsatisfactory character.

In Jefferson township, Sullivan county, Mr. Voorhees received two hundred and thirty-one (231) votes, and Mr. Washburn twenty-four (24) votes, as returned by the inspector and judges of election. Evidence is offered tending to show that Mr. Washburn, in fact, received at said poll thirty-two (32) votes, being eight (8) more than were returned for him. But to make up this number we have to count the votes of eight (8) persons, (to wit, Lewis R. Mathes, James H. Beck, Lacy Wood, Pleasant Posey, Abraham Briant, Andrew Geariner, Jacob W. Beck, and James Jowett,) who testify that they voted for Mr. Washburn, but who cannot themselves write their names; and of three others, (to wit, Lewis Solomon, Philip Solomon, and Frederick Hinkle,) who were not produced or sworn, but whose votes were testified to by others.

In Riley township, Vigo county, Mr. Voorhees received one hundred and seventy-three (173) votes, and Mr. Washburn eighty-eight (88) votes, as returned by the inspector and judges. The contestant has offered evidence tending to show that he in fact received one hundred and seven (107) votes at said poll, being nineteen (19) votes more than were returned for him. But to make up this additional nineteen (19) votes we have to count the votes of sixteen (16) persons, to wit, Levi Creach, Solomon Brown, William Fair, James H. Gilcrease, John Haney, John Taylor, Ezra M. Lowe, George Brown, Alexander Green, William Salamon, William Henry, John B. Creech, Hase Lynn, J. W. Smith, Isaac Lowe, and Abraham Latta, who swear that they voted for Mr. Washburn, but who cannot themselves write their names; and of twelve (12) others, to wit,

Hugh Maynard, David Joslin, James Franklin, George Bobo, Robert Leak, Timothy Higgins, Alonzo Ash, John Bowers, David Ward, Henry Lee, James M. Pearce, and Amos Hickson, who were not sworn or examined, but whose votes were testified to by others.

It appears then from this analysis of the evidence, that in the four townships named, there were returned for Mr. Washburn three hundred and thirteen (313) votes, and that taking everything that has the semblance of legal evidence on the part of the contestant, it tends to prove that in those four townships he received three hundred and eighty-eight (388) votes, being seventy-five (75) more than what were returned for him. But that to make up this additional seventy-five (75) votes, we have to count the votes of fifty-four (54) men, who, while they swear that they voted for the contestant, show, by making their marks to their signatures, that they cannot write their names; and twenty-eight (28) others who are not produced or sworn, but whose votes are testified to by others.

It certainly cannot be necessary to remark further upon the very weak and unsatisfactory character of this evidence. How easy is it for an unlettered man to be mistaken or deceived in regard to the character of the ballot that he delivers in at the polls? How easy for any man to be mistaken in regard to the vote cast by another, although standing near him when his ballot is deposited? How many are there, as we know from observation, who will receive from a friend or acquaintance a ballot, and profess to vote it, when, in fact, they substitute for it another and different ballot, more congenial to their own views or feelings? Both classes of evidence, by which it is attempted to prove this 82 votes, when analyzed amount to nothing on earth but *hearsay* evidence. An unlettered man voting by ballot has no means of knowing for whom he himself votes, except by relying upon the unsworn statement of other parties, who furnish him his ballot and explain to him its character. And a man standing by or near the polls has no means of knowing how another votes, except by relying upon the unsworn statement of the person voting. For although the witness may have furnished a ballot to the voter and followed him to the polls it is so easy to substitute one ballot for another before delivering it to the inspector or judge of election, that our knowledge of how another votes who has not been sworn is based at last upon our confidence in his integrity and truthfulness, in other words, in his unsworn statement. It amounts simply to *hearsay* evidence and nothing else, which, however we may rely and act upon it in the ordinary transactions of life, is not permitted to have any weight in any judicial tribunal on earth that has regard for the principles of the common law.

We have thus far not noticed the fact that Mr. Voorhees was not able to attend at the examination of any of the witnesses, and have examined the evidence, such as it is, on the hypothesis that all the witnesses examined were of the most unblemished character. And, indeed, the sitting member has taken no testimony, and none of the witnesses sworn are attacked or impeached. But it should not be forgotten that this is an attempt to set aside and destroy the sworn return of the regularly authorized officers of the law, and that in times of great party excitement it is unfortunately, in many cases, but too easy to find witnesses who are more anxious to achieve a party victory than to weigh and consider carefully and conscientiously the testimony which they give.

But admitting that these seventy-five (75) additional votes have been sufficiently proven to justify their allowance to Mr. Washburn, and adding that number to the vote returned for him from those townships, it but reduces Mr. Voorhees's majority that much, and still leaves him the duly elected member by a majority of four hundred and fifty-nine (459) votes.

Before leaving this branch of the subject it is proper to add that, of all the votes proven for Mr. Washburn, there is no evidence that the name of one of

them was on the tally-lists, or poll-books, or that any one of them was a legal voter in the township or district in which it is claimed that he voted.

But it is claimed that there is fraudulent conduct proved against the inspectors, judges, and others, having control of the ballot-boxes in said townships, sufficient to taint and corrupt the entire proceedings at said polls, and to make the whole election in said townships utterly null and void. In considering these charges, and the evidence thereon, we should not fail to remember—

1st. That it is not claimed that either one of said townships was otherwise than democratic, or that Mr. Washburn had a majority of friends and supporters in any one of them.

2d. That it was admitted before the committee that Mr. Washburn received, and had *returned* for him in said district, a larger number of votes than were cast at the presidential election, one month later, for Mr. Lincoln, which fact certainly tends to prove that he could not have been defrauded out of many votes.

3d. That *fraud*, when charged, must be proved; and that it never can legally be *presumed* from mere suspicious circumstances, however strong they may be deemed, that a mere discrepancy between the number of votes returned and the tally lists, or the number that may afterwards be proved to have been cast, has never, in any judicial or legislative inquiry, been considered as evidence of fraud at all tending to affect the validity of the election; and that if it should be held to have that effect, no election could be sustained, and every one in the United States could be defeated and destroyed; for there is, probably, scarcely a precinct in the whole country where discrepancies of this character may not be found or *proved* to exist. The class of men who must be taken for judges and clerks of election, in all rural districts, and the hurry, bustle, and noise around the polls when the election is taking place, makes such discrepancies a matter of course, and their entire absence would be a more suspicious circumstance than their presence.

Keeping these considerations in view, then, what is the character of evidence upon which it is attempted to vitiate and wholly destroy the elections in these townships, declare them null and void, and thereby give a seat in this house to a gentleman, whom it is no exaggeration to say no sane man, after looking over the record, can say ever received a majority of the legal or, indeed, other votes of his district.

FRAUD IN THE ELECTION.

The whole of the evidence upon which fraud is charged, and upon which the contestant relies to taint the election in these townships, and thereby declare them null and void, is here given. That which applies to Hamilton township is as follows :

HAMILTON TOWNSHIP.

Daniel Langdon, a witness for contestant, being duly sworn, deposes as follows :

Question. State if you know what persons constituted the election board at Hamilton precinct or township, Sullivan county, Indiana, at the general election in October, 1864.

Answer. William C. Griffin was the inspector, James A. Baird and Porter Burks were the judges, Benjamin F. Havens and myself were the clerks.

Question. State what you know in relation to any interference with the ballot-box at said election; give any circumstances you may have observed on that point.

Answer. I know nothing positively; all I know is from circumstances. All the circumstances that came under my observation are the following: When the board adjourned for supper there were about fifteen or twenty tickets counted out and strung on a string. The strung tickets were placed in the ballot-box, on top of the unstrung tickets, the tally-papers and poll-book were placed in the box, on top, and the box closed. I don't know whether the box was sealed up or not, nor could I state to whom the key was given. When we met after supper the ballot-box was placed on the table, and James A. Beard tried to unlock it with a key he had, but could not unlock it. The inspector then took the key and tried to unlock it, but failed; he then got another key and unlocked the box. The poll-books and

tally-papers were taken out, but the counted tickets could not be seen, but were finally found, covered up with uncounted tickets.

Question. Could those counted tickets which were strung have got where they were found unless the box had been opened in your absence?

Answer. I think not.

Question. What time did the board adjourn for supper; and how long were they at supper?

Answer. They adjourned about dusk, and were gone about an hour; the ballot-box was left in the library room, where the votes were received, at the court-house.

Question. Where did the inspector get the key with which he unlocked the box?

Answer. I don't know; he had several keys at the time; I think he got it in his pocket.

Question. For whom did you vote for Congress?

Answer. For D. W. Voorhees.

Question. What were the politics of the rest of the board?

Answer. They were all democrats.

Question. Was there any political friend of Colonel Washburn on the board?

Answer. There was none.

Question. Was there any effort made by Mr. Washburn's political friends to put any of his political friends on the board; or to divide the board between democrats and republicans?

Answer. There was an effort made to that effect in the morning before the board was organized.

Question. Was that effort opposed; and if so, by whom?

Answer. It was opposed by several of the democratic party. Mr. Hansill appeared to take the lead.

Question. Is that the same Mr. Hansill who appears for Mr. Voorhees in this case?

Answer. Yes.

Question. Did you touch the ballot-box while the board were adjourned?

Answer. I did not.

Cross-examined:

Question. How were the judges elected?

Answer. By the bystanders, a majority of whom were democrats.

Question. Where many republicans present when the election of judges by the bystanders took place?

Answer. There were several present; a good many.

Question. Did the republicans nominate any person for judge; and whom did they nominate?

Answer. They proposed the names of J. F. Martin and James W. Hinkle, but there was no vote taken upon it.

Question. Is Mr. Martin not an officer under President Lincoln? If so, what office does he hold?

Answer. He is postmaster at the town of Sullivan, in Sullivan county, Indiana.

Question. Is Mr. Hinkle not considered as a very warm republican?

Answer. He is firm in his principles, but not an active partisan; rather conservative.

Question. Was, at the October election, 1864, Mr. Hinkle a candidate for office; and if so, what office?

Answer. He was a candidate for county commissioner at said election.

Question. What was the political character of the judges elected by the bystanders?

Answer. They were firm democrats, but not active partisans.

Question. Who appointed the clerks?

Answer. I do not know positively; but it is my impression that the inspector and judges appointed them.

Question. State whether Mr. Havens, one of the clerks, is an active partisan?

Answer. I cannot say positively; I think he is not.

Direct-examination resumed:

Question. Look at Exhibit XX, herewith presented to you, and state whether it is a correct copy of a paper signed by you and the rest of the board of election?

(Question and answer objected to.)

Answer. It is.

DANIEL LANGDON.

EXHIBIT XX.

A CARD.

We, the undersigned, judges and clerks of the election held at the court-house in Sullivan on the 11th day of October, 1864, in view of the frauds alleged to have been perpetrated, and in justice to ourselves, avail ourselves of this the first opportunity offered to make the following statement:

Of the frauds charged we know nothing. We saw no act of impropriety by any member of the board while in session; but that we are satisfied in our own minds

that such charges are not without foundation, and we have such opinion upon the following circumstance, to which we are willing at any and all times to be qualified: At the adjournment of the board for supper, which was about dusk, we had counted out between fifteen and twenty tickets, which were strung on a string prepared for that purpose. The string of tickets was placed in the ballot-box on top of the uncounted tickets. The poll-books and tally-papers were then placed on top of the tickets, the box locked and set on a table in one corner of the room.

When the board met, after supper, the ballot-box was unlocked in our presence by the inspector, the tally-papers and poll-books taken out, but the string of counted tickets could not be seen. The inspector turned to the table in the corner of the room to search for it, and while thus engaged we found the string of tickets in the bottom of the ballot-box, completely covered by uncounted tickets. We are satisfied that the string of tickets could not have got to the bottom of the ballot-box without the same being opened in our absence and the tickets handled.

Respectfully submitted.

PORTER BURKS,
JAMES A. BEARD,
Judges.
DANIEL LANGDON,
BENJAMIN HAVENS,
Clerks.

I hereby certify that I believe the above statement to be correct. When the box was opened after supper I took out the poll-books and tally-papers, but could not find the string of tickets. Supposing they had been left out, I turned to look for them; mean time they were found in the box. It is evident that they were moved while the board was adjourned for supper.

Respectfully,

W. C. GRIFFITH, *Inspector.*

OCTOBER 19, 1864.

James A. Beard, being sworn, deposes as follows:

Question. State whether you were one of the judges of the election held at Hamilton township, Sullivan county, Indiana, in October, 1864; and if so, state all the facts and circumstances you may have observed in relation to any interference with the ballot-box at said election.

Answer. I acted as one of the judges at said election. I saw nothing wrong until we returned after supper. Before adjourning for supper the polls had been closed, and we had counted about fifteen or seventeen tickets; when we adjourned, the string with the counted tickets was placed in the ballot-box, on top of the uncounted tickets; when we met after supper, and the box was opened, the string with the counted tickets could not be seen; I looked in for it, turned over the tickets, and found the string with the counted tickets at or near the bottom of the ballot-box.

Question. Could the counted tickets on the string have got where you found them unless the box had been opened in your absence?

Answer. I do not think they could, unless the box had been shaken.

Question. Were inspector, judges, and clerks, all together during adjournment?

Answer. They separated; I went home to supper.

Question. Was the box locked when you adjourned?

Answer. I think it was; I did not lock it myself; I think Major Griffith locked it; he handed me a key; I kept the key, and handed it back to Major Griffith when the board met at the room where the election was held.

Question. Where was the box left when you adjourned?

Answer. In the voting room in the court-house.

Question. Did you, or any one of the board, to your knowledge, touch or open the box during adjournment?

Answer. I did not, and the others did not, to my knowledge.

Question. Did the key which you had (I mean the key which Major Griffith gave you) unlock the box when you came back?

Answer. I cannot say positively. Major Griffith gave me the key at the adjournments for dinner and supper, both, and at one of these occasions upon my return the key which I had would not unlock the box.

Question. Who did you vote for?

Answer. For D. W. Voorhees for representative in Congress.

JAMES A. BEARD.

William C. Griffith, being duly sworn, deposes as follows:

Question. State whether or not you were the inspector of the election held in Hamilton township, Sullivan county, Indiana, on the second Tuesday in October, 1864; and if so,

state what you know, if anything, in relation to any interference with the ballot-box at said election; state any circumstances you may have observed.

Answer. Yes; I was inspector of the election referred to; saw nothing to create any suspicion that the ballot-box was tampered with, as the ballots and names of voters balanced. Some few days after the election the judges and clerks of said election called my attention to the fears entertained by them of fraud being practiced. Their grounds of alarm were, as stated by them, that Mr. Beard found the strung tickets under the unstrung tickets. My knowledge of the case is this: we adjourned for supper about or after sunset; when we returned the tally-papers and poll-books were taken out by myself, but could not find the strung tickets. I turned to the table, remarking to the judges that they had failed to place them in the box, but before I was through looking for them Mr. Beard found them under the unstrung tickets, as above stated. This circumstance satisfied me the box had been tampered with; but on reflection, the strung tickets might have been turned under the unstrung tickets while I was searching for a bunch of tickets, not thinking at the time that there were only fifteen or twenty tickets strung.

Question. Did you, or any one, to your knowledge, open the box during adjournment?

Answer. I did not, and don't know of any one else.

Question. Where was the box left during your adjournments?

Answer. It was left in the library-room, in the court-house.

Question. Did you give the key to James A. Beard when the board adjourned?

Answer. I did. Upon the reassembling of the board the key which I had given to Beard, and which he returned to me, would not unlock the box, and I thereupon took another key from my pocket, with which I unlocked it. I don't remember whether this happened after dinner or after supper. Before giving the key to Mr. Beard I had it in my pocket, with two or three keys of the same size.

WM. C. GRIFFITH.

Porter Burks, being duly sworn, deposes and says as follows:

Question. State whether you were one of the judges of an election held in Hamilton township, Sullivan county, Indiana, in October, 1864; and if so, state all the facts and circumstances you may have observed in relation to any interference with the ballot-box at said election.

Answer. I was one of the judges of said election. When we went to supper we had some fifteen or twenty tickets counted out which I had strung on the string, and I placed, when we left, these strung tickets on the uncounted tickets in the box. When we came back from supper and had the box opened, the strung tickets were not on top of the uncounted tickets; they were subsequently found further down in the box, and pulled out.

Question. Did you, or any of the board, handle the box after you had adjourned for supper, and before you returned?

Answer. I did not; and if others did, I do not know it.

PORTER BURKS.

Sewell Coulson, a witness produced on the part of the contestant, being duly sworn, deposes, and says:

Question. Do you know of any persons voting at Hamilton township, Sullivan county, Indiana, at the election in October, 1864, who are now absent?

Answer. John Kelley, now absent with the 43d regiment voted.

Question. Do you know for whom he voted for representative in Congress?

Answer. Yes; for Colonel Washburn; I saw his ticket, and saw him vote it.

Question. State whether or not you were present at the election of the judges of said election.

Answer. I was present.

Question. State how it was conducted, and what was said by Samuel R. Hansill, the present attorney for D. W. Voorhees.

Answer. When the inspector of the election, Major Griffith, announced to the persons collected there that he was ready to receive nominations for judges, Mr. Hansill nominated James A. Beard; my brother, Uriah Wilson, nominated Joseph Martin, postmaster of the town of Sullivan; and Thomas McIntosh nominated Peter Burks. Beard and Burk were democrats; Martin is a republican. Before the vote was taken for the election of the judges considerable discussion was going on about having a mixed board, in which the inspector, Mr. Samuel R. Hansill, James W. Hinkle, and myself, participated. The inspector seemed to think that each party should be represented on the board. Mr. Hinkle and myself insisted on it as a matter of right; we asked it as a matter of favor to let us have one member of the board, to settle all disputes in regard to the fairness of the election. Mr. Hansill got up on a store-box (I think) and spoke in very violent language against Martin serving on the board. I then proposed to put Mr. Hinkle or some other of our friends on the board. Mr. Hansill replied that he would not trust Mr. Martin, Hinkle, or any other black abolitionist, on the board. At this time somebody to my left said that he withdrew the nomination of Porter Burks. Mr. Hansill urged that the vote on Beard

be taken, and he was the first man elected. Mr. Hansill then insisted that the vote be taken on Porter Burks; his name was put to vote, and no vote was taken upon the nomination of Martin, or any other republican.

Cross-examined:

Question. Did not the inspector read the statute law, to the effect that the bystanders had the right to elect the judges

Answer. Yes, he read it.

Question. Were not a majority of the bystanders democrats?

Answer. I cannot say that.

Direct examination resumed:

Question. State where the election of judges was held.

Answer. Outside the court-house, in the court-house yard.

Cross-examined again:

Question. Was not the election of judges held within a few feet of the window where the election was held and the votes taken in on said election day?

Answer. The crowd of people extended from the window where the votes were taken in, some ten or fifteen yards.

Question. How far did the inspector stand from that window?

Answer. About four or five feet.

SEWELL COULSON.

Now where is the evidence of fraud in all this. You may say that it is sufficient to excite some suspicion, but you cannot go beyond that. Upon whom, upon which one of the judge's inspectors or clerks of election have you fixed fraud? Can you say that the ballot-box was opened or improperly tampered with at all? Is it not manifest that the ballot-box might have been shaken in some way, or by some one, without being opened at all, and the strung tickets thereby turned under the others? Can you say upon any satisfactory evidence that Mr. Washburn lost a single vote that was cast for him at this precinct?

CLOVERDALE.

The evidence relied upon to establish fraud in this township is as follows:

A. B. Baird, being heretofore sworn, deposes as follows:

Question. State what conversation you had or heard, if any, soon after the October election, 1864, between or with James A. Scott and others in regard to the election in Cloverdale township.

Answer. I heard Mr. Scott say, a few nights after the October election in 1864, that, after the poll was counted out at Greencastle, he and a friend came to Cloverdale; found the ballot-box at Mr. Akers's, near Cloverdale; that they arranged the box, as they had reports from all the townships in the county, by which they knew they were beaten unless they could save the election at Cloverdale; and that he afterwards returned to Greencastle and told his friends to double their bets. This conversation occurred at Ricketts's hotel in Greencastle.

Question. State, if you know, what the politics of Mr. Scott are.

Answer. He is a democrat or butternut and a supporter of D. W. Voorhees, and is a leader of the democrats in Putnam county. I don't think that he knew, when he made the above remarks, that I was in the room. He was talking to other democrats, being several of them—perhaps ten or fifteen—in the room. I was the only Union man there. Austin Puett, Pat. Haney, and Sol. Akers were there, and are leading democrats—Puett being representative from Putnam county to the legislature, to which he claimed to be elected at the October election, 1864.

A. B. BAIRD.

Solomon Akers, being duly sworn, deposes as follows:

Question. State where you live.

Answer. About half a mile from Cloverdale.

Question. State whether or not any person other than your own family stayed all night with you on the night of the October election, 1864; and if so, who?

Answer. Arabiam Davis, the inspector of the election, stayed at my house that night.

Question. Did Davis have the ballot-box with him that night?

Answer. He had it with him.

Question. State whether or not any other person or persons were at your house that night after bedtime; and if so, who were they?

Answer. James A. Scott was there after bedtime.

Question. What hour of the night did he come to your house?

Answer. I think it must have been after ten o'clock. I had gone to bed when he came, and was asleep.

Question. What are your politics, and for whom did you vote for Congress at the October election, 1864?

Answer. I am a democrat, and voted for D. W. Voorhees.

SOLOMON AKERS.

Reubin McGinnis, being heretofore sworn, deposes as follows:

Question. State who constituted the election board in Cloverdale township, Putnam county, Indiana, at the October election in 1864.

Answer. Arabiam Davis was inspector, James McCoy and myself were the judges, and William Broadstreet and William Hood were the clerks.

Question. At what time did the board adjourn on the day of said election, and at whose instance?

Answer. After the polls were closed and the box sealed up, Mr. Davis said we would adjourn till to-morrow morning. There were no votes counted when we adjourned. Mr. Davis took the ballot-box with him when we adjourned.

Question. Was the box locked and sealed when you adjourned?

Answer. The box was locked and the hole in which the tickets were put was sealed; the keyhole was not sealed. McCoy, one of the judges, proposed to seal the keyhole, and Davis said it was not necessary.

Question. What time did the board meet next day?

Answer. I think it was near nine o'clock until they all came together.

Question. Did you see the ballot-box from the time you adjourned in the evening until you met next morning?

Answer. I did not see it. Mr. Davis took it, and brought it back next morning at nine o'clock.

Question. What are Mr. Davis's politics?

Answer. He is a democrat and a supporter of Mr. Voorhees, and a strong partisan.

Question. Where did Mr. Davis live at that time?

Answer. About three miles southwest of Cloverdale.

Question. Do you know where Davis stayed the night after the election?

Answer. I only know what he told me: he said he stayed at Sol. Akers's. Sol. Akers lives about three-quarters of a mile southeast of Cloverdale.

Question. Are you acquainted with James A. Scott; and if so, where did he live on the day of the October election, 1864?

Answer. I know him; he lived at that time at Greencastle, the county seat of Putnam county, ten miles from Cloverdale.

Question. State whether there was a ticket counted out at that election with the name of Joseph Sellers on it for assessor?

Answer. I examined every ticket; there was no such ticket counted out.

REUBEN MCGINNIS.

Now, where is the evidence of fraud here? No lawyer, I imagine, will insist that what Baird states about what one James A. Scott should have said at Greencastle is evidence. If we are going to disregard and set aside all the rules of evidence we can very easily prove anything on earth, no matter how improbable it may be. Mr. Baird states that he heard Mr. Scott say that he and a friend arranged the ballot-box; and it is proved that Mr. Davis, the inspector, staid the night after the election at the house of Sol. Akers, and had the ballot-box with him; that Scott was at the house of Akers that night; and that Scott and Davis were both democrats, or butternuts. And this is the character of evidence upon which you are called upon to turn out of this house a gentleman who holds his seat by a majority of five hundred and thirty-four votes, as shown by the official returns, and to give his place to his competitor!

JEFFERSON TOWNSHIP.

The evidence of fraud in Jefferson township is the following:

F. A. Harvey, a witness of lawful age, produced by contestant, being duly sworn according to law by me, deposes as follows in response to questions propounded by the contestant:

Question. State whether or not you voted at the general election held in the State of Indiana on the 11th day of October, 1864; and if so, at what precinct did you vote, and for whom did you vote, for representative in Congress for the seventh congressional district of the State of Indiana?

Answer. I voted at said election in Jefferson township, Sullivan county, Indiana, for Colonel Washburn for representative in Congress.

Question. Do you know who constituted the board of election in said township at said election?

Answer. I know Elias Newkirk was inspector; D. W. Alsom and Elijah Mayfield were the judges, and Samuel Enoch and Thomas Bedwell were the clerks.

Question. What was the political character of the board?

Answer. By general reputation they were democrats.

Question. Had Colonel Washburn any political friend on that board?

Answer. None, to my knowledge.

F. A. HARVEY.

Wonderful indeed! The persons constituting the board of election had the general reputation of being democrats! Ergo! the election was a fraud, and Mr. Washburn ought to have the seat which Mr. Voorhees now unjustly withholds from him. Well has it been said that—

“Trifles light as air
Are to the jealous confirmation strong
As proofs of Holy writ.”

RILEY TOWNSHIP.

The evidence relied upon to establish fraud in Riley township is as follows:

C. A. Ray, being heretofore sworn, deposes and says:

Question. State, if you know, who constituted the election board for Riley township, Vigo county, Indiana, at the October election, 1864.

Answer. Wilson Foster and Henry Christy were the judges, L. A. Ray and Linus Moyer were clerks, and G. W. Hickson was inspector of election.

Question. State whether or not the board adjourned for dinner; and if so, at what time of day; and where did you go to dinner?

Answer. The board adjourned for dinner about 12 o'clock m., and all members of the board took their dinner at Dr. Hickson's, who was inspector of election.

Question. State where the ballot-box was during the time you eat dinner.

Answer. In the front bedroom at Dr. Hickson's.

Question. State how long you eat dinner.

Answer. As near as I can judge, one hour.

Question. State how the front bedroom is situated in Dr. Hickson's house.

Answer. The two bedrooms communicate by a door between them.

Question. State whether any member of the board was in the bedroom while you were eating dinner at Dr. Hickson's.

Answer. After we had eaten dinner, Dr. Hickson went into the bedroom where the ballot-box was, and shut the door after him. He remained in the bedroom, as near as I can tell, from ten to fifteen minutes. While he was in there, the other members of the board were in the sitting room examining some outline maps.

Question. State how the number of votes counted out of the ballot-box accorded with the poll-books?

Answer. The tally-papers did not show as large a number of votes as the poll-books by four or five, if I remember rightly. There were some loose votes picked up on the table at which the board sat, and these tickets were counted to supply the deficiency in the number of votes as shown by the poll-book. How these votes got on the table I cannot tell—whether they came from the string of votes in the hands of one of the judges. They did not come out of the box. After the deficiency was discovered, no more votes were taken from the box, because there were no more in the box. I know not where those votes came from. After adding those, they were still one vote short.

Question. What is Dr. Hickson's politics? and who was he supporting for Congress?

Answer. He is known as a democrat and a strong partisan, and as a supporter of Voorhees for Congress.

Question. Do you know whether there were any Union men who voted at Riley township, Vigo county, Indiana, at the October election, 1864, whose depositions have not been taken to-day?

Answer. I do know of the following: James Franklin, Joseph Joslin, George Compton, John J. Ferrill, John B. Kester, and William Jordan, and probably others whom I don't recollect.

C. A. RAY.

Mary Lowe, a witness produced for the contestant, being duly sworn, deposes as follows:

Question. State where did you live on the 11th and 12th of October, 1864, and at the time of the October State election.

Answer. I lived at that time at Dr. Hickson's, in Riley township.

Question. State whether any person other than Hickson's family eat dinner at Hickson's on the day of said election; and if so, who?

Answer. Mr. Moyer, Mr. Christie, Mr. Ray, Mr. Foster, and the two Misses Lee did eat dinner there on that day.

Question. State what you observed in Dr. Hickson's bedroom a day or two after the election; state all you saw.

Answer. Next morning after said election, in Dr. Hickson's back bedroom, I found a lot of republican tickets under the carpet behind the door; I don't know how many tickets there were; one tack of the carpet was taken out and the tickets put under the carpet; I pushed the door back, and it would not go back entirely; on looking behind to see what was the matter, I found the tickets under the carpet.

her
MARY + LOWE.
mark.
NATHANIEL LEE.

Attest:

I repeat the question asked in regard to evidence of alleged irregularities and frauds in the other townships. Where is the evidence of fraud here, to justify throwing out the poll and declaring the election void, much less to give the seat to the contestant? Dr. Hickson was the sworn inspector of the election, having the right by law to have the custody and care of the ballot-box during the adjournments of the board. He invites the other members of the board to his house for dinner, places the ballot-box in his private bed-room. While they are all at his house he has occasion to visit his room and absents himself from his company for ten or fifteen minutes, for what purpose we are not informed. Whether to change his clothes, read letters he had received, write a letter, or whatever it might have been we do not know, and have not one particle of evidence on the subject. But was his going to the room where the ballot-box was even a *suspicious* circumstance? Unless men's visions are jaundiced they cannot so consider it. If Dr. Hickson left his company it was his duty to go to where the ballot-box was or to take it with him. *He was its lawful and sworn custodian.* If the board had separated for dinner, and the others not gone home with Dr. Hickson, some one of them must have taken charge of the ballot-box and kept it in his custody during the entire time of the adjournment. If Dr. Hickson had had no company with him to dinner, and had taken the ballot-box home with him, and kept it away from all other persons during the one or two hours of the adjournment, would that have been a suspicious circumstance? On the contrary, it would have been precisely what the law required him to do. And if he had contemplated or purposed fraud, would he have invited company to dinner at all? And yet, incredible as it in fact may seem, this is the evidence upon which it is asked of this House to exclude the return and declare the election in this township void.

But we have also the testimony of Mary Lowe, a servant girl, who cannot write her name, and who testifies that on the next morning after the election she found some "republican tickets" under the carpet behind the door in Dr. Hickson's room. How many tickets were there? We don't know. How did she know that they were republican tickets? Could she read them? We are not informed. Whose names were on them? Was Mr. Washburn's? Were they tickets prepared for that or for some former election? for that or some other State or district? Had they ever been in a ballot-box anywhere, or in the hands of a voter of the district, or of any elector anywhere? We are not informed. No witness undertakes or attempts to give us such information. If a clamor had not been raised could we conscientiously say that this evidence raises even a shadow of suspicion against any one? And upon such evidence we are asked by the mere force of numbers to vote Mr. Voorhees out and Mr. Washburn into Congress contrary, as we confidently assert, to the clearly and legally expressed will of the electors of the district.

After this discussion and presentation of the evidence, we do not deem it ne-

cessary to enter into the law bearing upon this case. The statute of the State of Indiana, under which this election was held, sets forth the general principle governing contested elections fully and accurately, and is in perfect accord with the decisions of this House upon the same question from the organization of the government to the present time. That statute provides as follows, to wit:

“No irregularity or malconduct of any member or officer of a board of judges or canvassers shall set aside the election of any person, unless such irregularity or misconduct was such as to cause the contestee to be declared elected when he had not received the highest number of legal votes; nor shall any election be set aside for illegal votes, unless the number thereof given to the contestee, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office.” (1 Gavin and Hord’s Statutes of Indiana, p. 318, sec. 15.)

As this section sets forth the law fully and accurately on the subject, and furnishes a consistent and intelligible rule for our guidance, I will not trouble the House with other references.

We can hardly deem it necessary to urge upon the consideration of the House the fact that Mr. Voorhees is the duly and regularly returned representative of his district; that he is returned as elected by a large majority; that such return is under all the solemnity and with all the sanctions of the law; and that, to meet this, the burden of proof is on Mr. Washburn, to meet and overcome, with competent and perfectly satisfactory evidence, all those presumptions which the law for the safety, security, and stability of society has thrown around the action and official conduct of its sworn officers. That Mr. Washburn has not furnished such evidence we think we have clearly shown. And now, in conclusion, we will add with all due respect that, while the history of legislative bodies furnishes many examples of partiality, wrong, and inconsiderateness in determining contested election cases, discreditable in the highest degree to the majority in those bodies, we believe, if Mr. Voorhees is deprived of his seat and the contestant given a place in this House which the electors of the district never conferred upon him, that the case of Washburn *vs.* Voorhees will deserve to stand out in history solitary and alone, and occupy a place to itself, and above all others, on the grand roll of partisan outrage and injustice. We therefore offer, as a substitute for the resolutions offered by the majority of the committee, the following:

Resolved, That the Hon. Daniel W. Voorhees was duly elected a representative in the thirty-ninth Congress, and is entitled to hold and retain his seat in this House.

SAMUEL S. MARSHALL.
W. RADFORD.

CLERKS OF COMMITTEES.

MARCH 2, 1866.—Laid on the table and ordered to be printed.

Mr. SCHENCK, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, in obedience to the resolution of the House on that subject, respectfully report :

That, "in the judgment of the committee, a clerk is necessary for the transaction of its business;" that "as to the time their clerk is occupied in the necessary and legitimate business of the committee," it cannot be distinctly stated, varying as it does with the pressure of business, but it is, as they believe, much more than the average time devoted to clerical labor in any of the executive departments of the government. As to "what portion of the time of the clerk is occupied in attending to the *private business* of the members of the committee," the committee will state that they deem that a matter of amity between gentlemen, affecting only the personal relations of the clerk and themselves, and which, if not in any way interfering with the proper discharge of his public duties, ought not, the committee most respectfully submit, be made a question for legislative action, nor even a subject for impertinent inquiry.

The committee having their attention thus attracted to the efficient and valuable services rendered by their clerk, avail themselves of the occasion to offer the following resolution :

Resolved, That the Clerk of the House pay out of the contingent fund, to the clerk of the Committee on Military Affairs, such additional sum as will make his annual compensation equal to that of the clerk of the Committee of Claims.

CLERKS OF COMMITTEES

REPORT

OF THE COMMITTEE ON THE CLERKS OF COMMITTEES

REPORT

OF THE COMMITTEE ON THE CLERKS OF COMMITTEES

That in the judgment of the committee, the "clerk of the committee" is a position of great importance, and one which should be filled by a person of high character and ability. The committee has endeavored to secure the best possible results in the selection of clerks, and has found that the present system is not satisfactory. It is recommended that the following changes be made in the selection of clerks:

1. That the committee be authorized to select clerks from among the members of the House of Representatives.

2. That the clerk of the committee be paid out of the contingent fund of the committee.

CREW OF THE SHIP NIGHTINGALE.

MARCH 2, 1866.—Ordered to be printed.

Mr. W. B. WASHBURN, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred the petition of Abel Townsend and eleven others, of the crew of the American ship Nightingale, report :

That the petitioners set forth in their petition that on the 22d day of October, 1860, they were shipped at Liverpool, England, as seamen on board the American ship Nightingale for a lawful voyage to the East Indies, and thence to the United States; that without their consent the course of the ship was steered for the coast of Africa, and they continued faithfully to perform their duties as seamen on board said ship until she was captured on the 20th day of April, 1861, in Kabenda bay, on the coast of Africa, for being engaged in the slave trade, by the United States sloop-of-war Saratoga, under command of Captain Taylor; and the said ship was sent to New York and condemned as a prize, and that a part of the crew, which was sent with the ship to New York, were used as witnesses against the ship, and were paid according to law out of the proceeds of the sales of said ship for their services from the time of their enlistment; but that they, the petitioners, were detained by the naval crew on the coast of Africa several months, when they were sent to New York; but it was too late to receive their pay out of the said prize money, the same having been paid into the treasury of the United States; hence they ask that the government will provide by special act that they may be paid for their services while engaged on board the slaver; also for the time of their detention, claiming that they rendered service on board the naval ship during their detention, and received no compensation therefor.

There is no evidence to show that they unwillingly served on board the said slaver, and in this enlightened age it does not seem becoming to the government to establish a precedent of rewarding them for their services while engaged in such a hellish work.

So far as the claim for services on board the naval ship is concerned, they do not seem to have been employed by the government, but all the labor they performed seemed to have been voluntary, and hence they could receive no pay and would not seem to be entitled to any.

The government having landed them in New York and furnished them with new suits of clothing, free of expense, the committee are of opinion that the government has discharged all its obligations to them, and therefore recommend that the petitioners have leave to withdraw.

JOHN A. PRENTICE.

MARCH 2, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the claim of John A. Prentice, report:

The claim is preferred by the warden of the Ohio penitentiary for services of himself and clerk in the care of military prisoners committed to the penitentiary by sentence of military tribunals.

In reference to this claim the assistant adjutant general, General Townsend, says: "By an arrangement with the authorities of the State of Ohio, prisoners under sentence of military tribunals are committed to that penitentiary on the same terms and conditions as those under sentence of civil tribunals committed by the authorities of the State."

The warden receives compensation from the State for taking care of civil prisoners; and as examination and inquiry have satisfied the committee that military prisoners assume the *status* of civil prisoners committed by the State, no good reason is perceived why the United States should pay the warden additional compensation to that paid by the State.

The committee, therefore, recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be rejected.

CALVERT GAITHER.

MARCH 2, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the case of Calvert Gaither, made the following report :

That this claim is from North Carolina, and for the destruction of property during the late war by the army of the United States, and is included in the class of claims prohibited by the resolution of the House.

The committee, therefore, recommend that the papers and memorial be laid on the table, and the committee discharged from any further consideration thereof.

GALETT GALTHER

MARCH 2, 1864—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, reads the following

REPORT

The Committee of Claims, to whom was referred the case of Galett Galtner, made the following report:

That this claim is from North Carolina and is for property taken during the late war by the army of the United States. The claimant claims that the property was taken by the army of the United States and that the same was not returned to him. The committee, therefore, recommend that the claim be paid on the table, and the committee do hereby report the same.

GEORGE H. BONEBRAKE.

MARCH 2, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the case of Captain George H. Bonebrake, report :

That it appears, from the facts in the case, that Captain Bonebrake had in his possession nine hundred and eighty-five dollars, government funds, and that the same was stolen from him while asleep, at Indianola, Texas, on the 28th of July, 1865, and without any fault or negligence on his part. This appears only from the sworn statement of the petitioner. He is, however, represented as a truthful and reliable man.

There is no evidence in the case to show for what purpose Captain Bonebrake had this money, or why he carried it about his person. It appears that relief has been asked of the Commissary General of Subsistence, without any favorable result.

To refuse the relief prayed for may be a great hardship to the petitioner, still the committee think that it would establish a dangerous precedent to grant relief upon the uncorroborated statement of a claimant. The committee therefore recommend the adoption of the following resolution :

Resolved, That the prayer for relief be rejected.

GEORGE H. BOKERAKI

March 2, 1895.—Ordered to be printed.

Mr. THORNTON, from the Committee on Education, reports the following:

REPORT

The Committee on Education, to which was referred the case of George H. Bokeraki, reports:

That it appears from the facts in the case that Bokeraki had in his possession nine hundred and eighty-five dollars, and that the same was stolen from him by a clerk of the State of New York, July, 1894, and without any fault or negligence on his part. It is apparent from the sworn statement of the petitioner, who is a person of upright and reliable character, that he is a person of upright and reliable character.

There is no evidence in the case to show that Bokeraki was in any way connected with the theft of the money, or why he should be held liable for the same. It appears that the money was stolen from him by a clerk of the State of New York, and that he is a person of upright and reliable character.

To refuse the relief prayed for may be a grave hardship to the petitioner, and the committee think that it would establish a dangerous precedent to grant relief upon the uncorroborated statement of a claimant. The committee therefore recommend the adoption of the following resolution:

Resolved, That the prayer for relief be rejected.

B. F. GAITHER.

MARCH 2, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the claim of B. F. Gaither, made the following report :

The claim in this case is for a cotton factory burnt in North Carolina by the troops of the United States during the recent rebellion.

The destruction complained of is among the ravages of the war, and excluded by a resolution of this House.

The committee, therefore, recommend that the memorial and accompanying papers be laid upon the table, and that the committee be discharged.

REPORT

OF THE

COMMISSIONERS OF THE GENERAL LAND OFFICE

IN RESPONSE TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES

ADOPTED JANUARY 18, 1870

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1870.

HENRY F. MAYER.

MARCH 2, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Henry F. Mayer, report :

That compensation is prayed for in this case for the loss of a mare under the following circumstances : The petitioner was first lieutenant of Virginia mounted infantry, in the late war for the suppression of the rebellion. The company was encamped near Bridgeport, West Virginia, about two hundred yards from a railroad bridge, and while thus encamped the mare became frightened at the steam cars and broke from her fastenings and ran into the railroad bridge, where she was killed.

The act of Congress of March 3, 1849, does not provide for cases of this character. The mare was not killed in battle, and, from anything that appears in the proof, was not securely fastened. The committee regard the loss as a casualty for which the government is not responsible, and therefore recommend the rejection of the claim.

HENRY F. MAYR

MARCH 2, 1908—Ordered to be printed

Mr. Thompson, from the Committee of Claims, made the following

REPORT

the Committee of Claims, to whom was referred the petition of Henry F. Mayr.

That compensation is prayed for in that the petitioner, Henry F. Mayr, under the following circumstances: The petitioner was a member of the 1st Iowa mounted infantry, in the late war for the suppression of the rebellion. The company was stationed near Bridgeport, West Virginia, and while there, the company was ordered to cross a railroad bridge, and while thus engaged, the bridge collapsed, and the petitioner was thrown from the bridge and broke from his fall, and was killed.

The act of Congress of March 3, 1877, which provides for the payment of claims for the loss of property, and the act of Congress of March 3, 1879, which provides for the payment of claims for the loss of property, are both applicable to the case of the petitioner. The report was not actually passed. The committee on the part of the majority for which the government is not responsible, and the committee on the part of the minority of the claim.

THOMAS WELLS.

MARCH 2, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the case of Thomas Wells, made the following report:

That, in this case, the property destroyed for which compensation is prayed was situate in Columbia, South Carolina, and was burned, so far as appears from the proof, by the soldiers of General Sherman's army, without any order to that effect from the commanding officer.

In addition, the houses burned were in South Carolina, one of the States lately in rebellion, and the case comes within the resolution adopted by the House in relation to claims of this class from such States.

The committee therefore recommend that the claim be laid on the table, and that they be discharged from any further consideration of the same.

THOMAS WELLS

REPORT

Mr. Thompson, from the Committee on Education

REPORT

The Committee of the House of Representatives on Education

That in this case, the proposed legislation was referred to the Committee on Education from the House by the Speaker, and the Committee have the honor to report that they are in favor of the same, and recommend its passage.

HENDERSON ADAMS.

MARCH 2, 1866.—Ordered to be printed.

Mr THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the claim of Henderson Adams and others, made the following report:

That the claim in this case is for compensation for the destruction of the court-house in Lexington, North Carolina, by the ravages of war; and as it comes within the rule adopted by the House in relation to claims from the States recently in rebellion, the committee recommend that the same be laid upon the table, and the committee discharged from any further consideration of the same.

INTERNAL REVENUE

MADE AT WASHINGTON

IN RESPONSE TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES

REPORT

THE COMMISSIONER OF THE INTERNAL REVENUE, IN RESPONSE TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES, HAS THE HONOR TO REPORT THAT THE FOLLOWING ARE THE RESULTS OF HIS INVESTIGATION:

That the duties of the Commissioner of the Internal Revenue are to collect the taxes imposed by law, to manage the revenue, and to report to the Secretary of the Treasury the results of his administration. He is also to see that the laws are faithfully executed, and that the revenue is properly accounted for.

DANIEL H. BINGHAM.

MARCH 2, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Daniel H. Bingham, with accompanying papers, have had the same under consideration, and report:

That the petitioner represents that he is a loyal citizen of the State of Alabama. His claim is principally for horses, mules, forage and subsistence, taken by order of Colonel J. B. Purchin, commanding the eighth brigade, third division, United States troops, stationed at Athens, Alabama, from the 2d to the 26th of May, 1862.

The petitioner states that during that time it became necessary to supply and subsist the troops on the inhabitants of Athens and the vicinity; that in most cases receipts were given for supplies taken; that on the 26th of May, 1862, the command was ordered to Chattanooga, Tennessee, and about the 1st of July following the brigade organization was dissolved, and the several regiments assigned to distinct duty in guarding the line of railroad. Brigade officers no longer acting in that capacity failed to settle the claims against that command.

The petitioner alleges that after the departure of the troops he collected together the several claims outstanding, for the supplies taken as aforesaid, and a considerable number of the receipts and vouchers were placed in the hands of Lieutenant George W. Marsh, who styles himself "Commissioner of Claims," at Huntsville, Alabama, on the 22d of August, 1862; but it is not stated by what authority Lieutenant Hunt acted, or that he granted any relief. It is assumed that he did not. The total amount of the claim is \$6,605 61, embracing sixty several items, taken from nearly as many different parties, all of which the petitioner claims to represent in his own right. The original receipts of officers for these supplies, with a few exceptions, are not produced. The entire claim may be characterized as without sufficient vouchers.

At the time these supplies were taken, General Buell was in chief command, and General D. S. Stanley, then commanding his regiment, in a letter on file, dated January 30, 1865, and relating to this claim, states that "it was then (in 1862) the policy of the officers there (in Tennessee and Alabama) highest in command to pay all, the disloyal as well as the loyal, for such stores." This may explain why vouchers were given for such property, and these receipts, imperfect, informal, and insufficient as evidence even, constitute the basis of the petitioner's claim. Whether they were bought up, and for what amount of consideration, does not appear. Many of the articles charged for are not strictly military supplies in any staff department, and in many instances the rate of charges appears unreasonably high.

Upon the foregoing facts, the committee submit that, granting the loyalty of the petitioner, there is no evidence touching the loyalty of those parties from whom the supplies were taken; nor is there any evidence of the amount paid by the petitioner for any item in the claim. That it would be a bad precedent to allow traffic and speculation in claims of disloyal citizens in States in rebellion against the government. That no part of the claim being sustained by satisfactory evidence, it is recommended that the claim of Daniel H. Bingham be rejected.

ADMISSION OF TENNESSEE.

[To accompany H. Res. No. 83.]

MARCH 6, 1866.—Ordered to be printed.

Mr. BOUTWELL, from a minority of the Committee on Reconstruction, submitted the following as their views :

The undersigned, members of the Joint Committee on Reconstruction, dissenting from the report of the majority concerning Tennessee, respectfully submit the following statement :

The last United States census shows that rather more than one-fourth of the people of Tennessee are colored persons, and that less than three-fourths are white. The evidence submitted to the committee shows that the colored people are unanimously loyal to this government, and that about one-half the white persons are disloyal. In East Tennessee the number of loyal persons far exceeds the number of disloyal, while in Central and West Tennessee the loyal white population constitute only a minority of the whole.

The proposition of the committee contemplates the restoration of Tennessee to political power in the government of the United States, and that the elective franchise may be confined to the loyal white male citizens of the State for a period of about fifteen years, while no provision whatever is made for the exercise of the elective franchise by loyal colored people.

Previous to the rebellion the voting population of the State, then limited to white persons, was about 120,000. Of the present voting population, not more than 62,000, and probably not more than 50,000, can be regarded as loyal. The result of the proposition of the committee is, that a State will be exercising power in the government of the United States, in which half its white people, numbering about 60,000, and all its colored population, numbering about 80,000 adult male citizens, will be excluded from participation in public affairs. Thus of about 200,000 adult male citizens of the State, not more than 60,000 will possess political power.

The exclusion for a limited period of time of the men who have participated in the rebellion, and as punishment for their offences, meets the approval of the undersigned, and cannot, by the parties excluded, be made properly the subject of complaint; but it is a very grave question, whether a State government can be set up and maintained, according to the theory of American institutions, in which seven-tenths of the adult citizens are deprived of a voice in its public affairs.

It appears conclusively, from the testimony of Major General Thomas, Major General Grierson, and others, that secret organizations exist in all the rebel States, whose purpose is to obtain representation in Congress, then to impair or destroy the credit of the national government, involve the country in a foreign war, and avail themselves of the opportunity thus created to effect a dissolution of the Union and the establishment of a separate government. With a knowledge of these facts, it would seem to be of the first importance in the reconstruction of the government to secure in every State a loyal voting population. The statistics of Tennessee show that it is entirely practicable, by the extension of the elective franchise universally, or by a qualification which will

render it practicable ultimately, and within a reasonable time, for the adult male colored population to become voters, to place the government of that State irrevocably in the hands of loyal men.

In the exigency that exists, it would seem to be wise statesmanship to accept the services and political power of men who have shown themselves under all circumstances to be true friends of this nation. Moreover, the admission of the colored men to the exercise of the elective franchise would enable the loyal people of Tennessee to restore to the mass of their fellow-citizens who have been engaged in the rebellion, and who are not criminally or officially distinguished from their associates, to participate, without much delay, in the government of the State and of the country.

This measure, which cannot be safely adopted if the elective franchise is limited to the white people in Tennessee, will become entirely practicable by the extension of the elective franchise as suggested. The magnanimous character of such a proceeding could not fail to induce many of those who have been engaged in the rebellion to support the government in good faith. Moreover, the rule of excluding permanently, or for a long term of years, all those who have participated in the rebellion, if adopted in the case of Tennessee, must be extended to the other rebel States. In some of those States not more than a tenth or a fifth of the people have been loyal, and in such States it would be impossible to set up a government with any hope that it would be permanently maintained, in which the elective franchise should be limited to the loyal white people exclusively. Hence the country will be compelled to hold such States for a long period of time without representation in Congress, and subject to the authority of the national government.

This theory is contrary to the theory of our institutions, to the practice of the government, and cannot, for any considerable period of time, be pursued. In a few years, at furthest, such States, even those where the number of loyal white people is least, will be admitted to power in the government of the country, with the elective franchise in the hands of disloyal whites, who, by irresistible majorities, will control the policy of the States and the character of their representation in Congress.

Regarded as a national question, and as a subject affecting the peace and prosperity of the country, it is of prime importance to secure to each State a loyal basis for the maintenance of its government. It seems unwise to consider as of primary importance the political character of the representative who may offer himself for a seat in Congress. The right to be represented is the right of the people. No individual has a right to be a representative until he has been duly elected. While it is eminently proper for each branch of Congress to inquire into the loyalty of every claimant of a seat whose loyalty may be questioned, it still is vastly more important to ascertain the loyalty of the constituency he claims to represent. The official life of the representative, whether in the Senate or the House, is comparatively brief, while the constituency is enduring. If the constituency be loyal, the power of the representative for evil, even though he be a man of disloyal opinions, is relatively unimportant; but if the constituency be disloyal, no limit can be assigned to its power to affect perniciously the public welfare.

It is also to be observed that, technically considered, a man is loyal whose disloyalty cannot be proved. If a constituency is disloyal, it will always be in its power to select, as its representative, a man who is free from any personal participation in disloyal proceedings, and yet who will give his vote and influence in a manner to thwart, impair, and finally to destroy the government.

Now, can the undersigned be indifferent to the claim of the colored people of Tennessee to a participation in the government of that State and the country? By the laws of the land they are citizens, and consequently are entitled to the rights and privileges of citizenship. Nor does it seem to be a compliance with

the provisions of the Constitution by which the United States guarantees to every State a republican form of government if we permit Tennessee to assume relations as a State while she excludes more than one-fourth of her people from the ballot-box, which is the only means of protection in time of peace.

It should be borne in mind also that the colored people are to be taxed as other citizens, and that they are deprived of representation permanently by the existing laws of Tennessee. It is urged as an argument for admitting the rebel States immediately, that otherwise they are subject to taxation without representation, contrary to the theory of republican government. In the case of the rebel States, the deprivation of representative power for a brief time is the result of their own criminal folly; but what justification can be offered for recognizing a system of government in Tennessee which excludes permanently more than one-fourth of its inhabitants, while they are taxed equally with those who exercise political power?

The undersigned do not on the present occasion express any opinion as to the legal relation sustained by Tennessee to the Union, inasmuch as they consider it more important to secure her reappearance as a State, clothed with full power, and in harmony with the general government, upon principles which guarantee at once loyalty to the Union and domestic peace within her own borders. They therefore recommend the following amendment to the conditions reported by the committee: "Said State shall make no distinction in the exercise of the elective franchise on account of race or color."

E. B. WASHBURNE.
GEO. S. BOUTWELL.

ADMISSION OF TENNESSEE.

[To accompany H. Res. No. 83.]

MARCH 5, 1866.—Ordered to be printed.

Mr. ROGERS, from the minority of the Committee on Reconstruction, submitted the following

REPORT.

Minority report against the joint resolution admitting the State of Tennessee into the Union.

To the House of Representatives :

The subscribers beg leave to submit to the House a minority report against the joint resolution, reported from the Committee on Reconstruction, to admit the State of Tennessee into the Union on an equal footing with the other States, and show to the House the following reasons :

First. Tennessee is now, and has been at all times since her admission into the Union, one of the United States of America ; and, consequently, any law of Congress admitting her into the Union, or authorizing her to exercise the functions of a State within this Union, must be based upon the idea that she has been during the war, and is now, legally out of the Union, or at least so for all practical purposes.

Second. No State can by any act of its people be withdrawn from the Union without the consent of every other State.

Third. The people of the State of Tennessee, by virtue of an ordinance of secession, claimed the right to withdraw her from the Union ; and to enforce their pretended right placed a portion of her people in a state of insurrection and rebellion against the United States ; while the government of the United States denied the right of the people of Tennessee to withdraw the State from the Union ; and, to settle the question, a portion of the people of Tennessee, with the aid of the so-called confederate government, engaged with the United States in a conflict of arms. That conflict decided that the claim of the people of Tennessee had no foundation in law or fact, and the attempted withdrawal of the State was by the federal government prevented, and consequently the destruction of the constitutional relations of Tennessee within the Union and to the government of the United States was prevented and the State kept in the Union.

Fourth. There is no such thing as a State being in the Union and possessing the right of local and domestic legislation without the absolute right to demand representation in Congress, because the Constitution is based upon the equality of the States.

Fifth. This joint resolution does not admit the members from Tennessee to take their seats in this body upon their qualifying by oath according to law.

Sixth. There is no question in the minds of the committee as to the loyalty of the members elect from the State of Tennessee, and therefore, upon the fact

that the State of Tennessee is now one of the United States of America, within the Union, her representatives ought to have the oath of office administered to them at once by the Speaker and they be admitted members of this house. And, therefore, we recommend, as a substitute for the said joint resolution, that the House at once adopt the following resolution, or one of like character, to wit:

Resolved by the House of Representatives, That the representatives elect to Congress from the State of Tennessee be, and they are hereby, admitted to take their seats in this house as members thereof, upon their taking the oath prescribed by law.

A. J. ROGERS.

H. GRIDER.

CLERKS OF COMMITTEES.

MARCH 9, 1866.—Laid on the table and ordered to be printed.

Mr. JULIAN, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, in obedience to a resolution of the House of February 26, instant, on the subject of clerks of committees, submit the following report :

They are clearly of the opinion that a clerk is necessary for the transaction of their business. The time occupied by their clerk "in the necessary and legitimate business of the committee" cannot be stated with precision, as it must vary with the amount and pressure of business, but it is amply sufficient, in the judgment of the committee, to require his services. In addition to his ordinary duties as clerk he is specially charged with the care, preservation, and continuation of the series of land maps ordered for the use of the committee, by resolution of the House of Representatives of May 4, 1848; and by resolution of the House of May 27, 1862, a "land map room" is provided for in the Capitol, in which all the maps constructed under the resolution referred to shall be preserved by the order of the committee for the use of the House of Representatives.

In further response to the resolution of inquiry, the committee, adopting the language of the Committee on Military Affairs, in answer to the same resolution, would respectfully submit that, "as to what portion of the time of the clerk is occupied in attending to the private business of the members of the committee," the committee state that they deem that a matter of comity between gentlemen, affecting only the personal relations of the clerk and themselves, and which, if not in any way interfering with the proper discharge of his public duties, ought not, the committee respectfully submit, to be made a question for legislative action, nor even a subject for impertinent inquiry.

THE HISTORY OF THE
REIGN OF
HAROLD GODWINSON
BY
JOHN RUSKIN

RECAPITULATION

The history of the reign of Harold Godwinson is a subject of great interest to the English people. It is a subject which has been treated in many different ways, and which has given rise to many different opinions. The purpose of this book is to give a clear and concise account of the events of the reign, and to show the influence of the various factors which were at work at the time.

The reign of Harold Godwinson was a period of great change and confusion in England. It was a period when the country was divided into many different factions, and when the king was often at the mercy of his nobles. The reign was also a period when the country was threatened by foreign invasions, and when the king had to fight many battles to maintain his throne.

The purpose of this book is to give a clear and concise account of the events of the reign, and to show the influence of the various factors which were at work at the time. It is a book which is intended for the general reader, and which is written in a simple and straightforward style. It is a book which is intended to be read by all who are interested in the history of England, and who wish to know more about the reign of Harold Godwinson.

AMENDMENT TO THE CONSTITUTION.

[To accompany H. Res. No. 43.]

MARCH 13, 1863.—Ordered to be printed.

Mr. WILLIAM LAWRENCE, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred "House joint resolution No. 43, proposing an amendment to the Constitution of the United States," report :

That they have had the same under consideration, and that some changes therein are deemed advisable.

The resolution, as introduced, is in these words :

Mr. WILLIAM LAWRENCE, of Ohio, on leave, introduced the following joint resolution :

JOINT RESOLUTION proposing an amendment to the Constitution of the United States.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several States, which, when ratified by three-fourths of said legislatures, shall be valid, to all intents and purposes, as a part of said Constitution, namely :

ARTICLE —.

SECTION 1. Neither Congress nor any State shall ever authorize, provide for, or make payment to any person or persons on account of the emancipation of any slave or slaves in the United States, or as compensation therefor.

SEC. 2. *And be it further enacted,* That Congress shall have power to enforce this article by appropriate legislation, and the judicial power of the United States shall extend to all cases arising under this article and the laws made in pursuance thereof.

In April, 1862, Congress passed a joint resolution in these words :

JOINT RESOLUTION declaring that the United States ought to co-operate with, affording pecuniary aid to, any State which may adopt the gradual abolishment of slavery.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States ought to co-operate with any State which may adopt gradual abolishment of slavery, giving to such State pecuniary aid, to be used by such State in its discretion, to compensate for the inconvenience, public and private, produced by such change of system.

Approved April 10, 1862.

In February, 1864, Congress passed an act containing a section as follows :

THIRTY-EIGHTH CONGRESS, SESSION 1, CH. 13, SEC. 24, 1864.

SECTION 24. *And be it further enacted,* That all able-bodied male colored persons between the ages of twenty and forty-five years, resident in the United States, shall be enrolled according to the provisions of this act, and of the act to which this is an amendment, and form part of the national forces ; and when a slave of a loyal master shall be drafted and mustered in the service of the United States, his master shall have a certificate thereof, and thereupon

such slave shall be free; and the bounty of one hundred dollars, now payable by law for each drafted man, shall be paid to the person to whom such drafted person was owing service or labor at the time of his muster into the service of the United States. The Secretary of War shall appoint a commissioner in each of the slave States represented in Congress, charged to award to each loyal person to whom a colored volunteer may owe service, a just compensation, not exceeding three hundred dollars, for each such colored volunteer, payable out of the fund derived from commutations; and every such colored volunteer, on being mustered into the service, shall be free.

Approved February 24, 1864.

WAR DEPARTMENT, *Washington, January 9, 1866.*

SIR: To the resolution of the House of Representatives of the 8th instant, in regard to the appointment of commissioners under the 24th section of the act of February 24, 1864, entitled "An act to amend an act entitled 'An act for enrolling and calling out the national forces, and for other purposes, '" approved March 3, 1863, I have the honor to answer:

1st. That commissioners were appointed in the States of Maryland and Delaware, and that in the other slave States, by the President's direction, no appointments have been made.

2d. That the sums awarded by the commissioners in Maryland and Delaware, and the amounts paid thereon, are set forth in the report of Assistant Adjutant General Foster, hereto annexed. The order of the President suspending further appointments, in the absence of any limitation of time in the act of Congress requiring them to be made, was the reason of the Secretary of War for not appointing commissioners in other slave States. The necessity of providing for the payment of troops, and the pressing exigencies of the war, required all the funds furnished by the treasury to be applied to those purposes, and for that reason payments on awards have been suspended.

The commutation funds referred to in the act of Congress, as reported by the Provost Marshal General, amounted, on the 24th day of February, 1864, to the sum of seven million four hundred and thirty-nine thousand and thirty-five dollars and twenty cents, (\$7,439,035 20.) The amount was subsequently increased by additional payments ten million four hundred and thirty-eight thousand five hundred and twenty-nine dollars and twenty-five cents, (\$10,438,529 25.) Portions thereof were applied to the purposes set forth in the accompanying report of the Provost Marshal General, amounting to the sum of eight million three hundred and sixty-two thousand six hundred and forty-one dollars, (\$8,362,641.) The Provost Marshal General reports on hand, subject to the provisions of said act, the sum of nine million five hundred and fourteen thousand nine hundred and twenty-three dollars and forty-five cents, (\$9,514,923 45,) being now over two millions more than was on hand at the date of the appropriation—February 24, 1864.

At the last session of Congress, on the 25th day of January, 1865, in answer to a resolution of inquiry, a report was made by the Secretary of War upon this subject to the House of Representatives, and also a report to the Senate, on the same day; copies of which reports are hereto attached. The President's direction remains unrevoked, and the necessity for the use of all available funds for the payment of troops and supplies still continues.

Very respectfully, your obedient servant,

EDWIN M. STANTON, *Secretary of War.*

Hon. SCHUYLER COLFAX,

Speaker of the House of Representatives.

ADJUTANT GENERAL'S OFFICE,

Bureau for Colored Troops, Washington, D. C., January 9, 1866.

SIR: In compliance with your instructions of this date to report as to the States where commissions have been appointed, and what awards have been made and what paid, under section 24 of the act of Congress approved February 24, 1864, I have the honor to report that commissions have been appointed for the States of Maryland and Delaware.

The commission for the State of Maryland was convened October 26, 1863, and dissolved October 18, 1865. There were filed with this commission three thousand eight hundred and sixty-seven claims for compensation under the act of Congress referred to.

Awards were made by the commission upon seven hundred and eighty-six

claims, the amount awarded being.....	\$230,750
Twenty-five of these claims have been paid, amounting in the aggregate to.....	6,900

Leaving an unpaid balance of.....	223,850
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The commission for the State of Delaware was convened July 21, 1864, and dissolved July 6, 1865. There were filed with this commission one hundred and fourteen claims. Awards were made by the commission upon forty-three claims, amounting to \$11,833. Upon these awards no payments have yet been made.

I have the honor to be, very respectfully, your obedient servant,

C. W. FOSTER, *A. A. Gen'l Vols.*

Hon. EDWIN M. STANTON, *Secretary of War.*

On the 9th of January the Secretary of War made a report to Congress, as follows:

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S OFFICE,
Washington, D. C., January 10, 1866.

SIR: I have the honor to acknowledge the receipt of a resolution of inquiry by the House of Representatives, of which the following is an extract, to wit: "and that he also inform this House the amount of said commutation fund on the said 24th day of February, 1864, and what disposition, if any, has since been made of said fund in whole or in part, and what amount of said fund now remains on hand and subject to the provisions of the act aforesaid."

The amount of the commutation fund in the treasury of the United States subject to draft on the 24th of February, 1864, was \$7,439,035 20
Since the 24th of February, 1864, there has been received... \$10,438,529 25

The expenditures from the commutation fund since February 24, 1864, are as follows:

For procurement of substitutes and recruits,
bounties, and premiums \$6,577,641 00
For enrolment and draft..... 1,785,000 00

(In these amounts is included the sum of \$30,000 turned over to the chief of the Bureau of Colored Troops.)

Total expenditures since February 24, 1864..... 8,362,641 00

Balance available, amount of the commutation fund received since February 24, 1864 2,075,888 25

Amount remaining in treasury of the United States subject to draft January 11, 1866 9,514,923 45

Very respectfully, your obedient servant,

JAMES B. FRY,
Provost Marshal General.

Hon. EDWIN M. STANTON,
Secretary of War.

WAR DEPARTMENT,
Washington City, January 25, 1865.

SIR: In answer to the resolution of the House of Representatives, dated the 17th instant, in relation to the appointment of commissioners in the slave States to award to the owners of slaves, enlisted as volunteers, compensation for their services, I have the honor to say, in reply to the first branch of the inquiry, that commissioners have been appointed in the States of Maryland and Delaware; and that in the other slave States, by the President's direction, no appointments have yet been made.

In answer to the second branch of the resolution, I have the honor to state that the amount of the commutation fund is reported by the Provost Marshal General to be \$12,170,663 45, a portion of which has been assigned for the payment of bounties required in raising new troops. It is believed, however, that there will be sufficient to pay the owners of slaves the sum allowed by the act of Congress.

Very respectfully, your obedient servant,

EDWIN M. STANTON,
Secretary of War.

Hon. SCHUYLER COLFAX,
Speaker of the House of Representatives.

WAR DEPARTMENT,
Washington City, January 25, 1865.

SIR: In reply to the resolution of the Senate of this date, making inquiry respecting the appointment of a "commission in each of the slave States represented in Congress, charged to award to each loyal person to whom a colored volunteer may owe service a just compensation," I have the honor to state that commissioners have been appointed in the States of Maryland and Delaware; and that in the other slave States, by the President's direction, no appointments have been made.

Very respectfully, your obedient servant,

EDWIN M. STANTON,
Secretary of War.

Hon. HANNIBAL HAMLIN,
President of the Senate.

It is understood that in Maryland provision has been made by act of the legislature for compensation for slaves enlisted in the national forces.

In view of these provisions, involving the good faith of the nation, but without expressing any opinion as to how far existing laws should be carried out, the committee are clearly of opinion that the joint resolution approved April 10, 1862, does not give any just claim to compensation for slaves, since no State acted on the faith of it.

The committee therefore recommend the following amendments to the House joint resolution No. 43, to wit:

1. Strike out of section 1, line 12, the words "*in the United States.*" They are deemed unnecessary.
2. In section 2 strike out the words "*And be it further enacted, That.*"
3. Add at the end of section 1 the words "except as provided by statute in force prior to the 1st day of January, 1865."

And with these amendments the committee recommend that the joint resolution be passed.

KITTANNING BANK.

MARCH 14, 1866.—Laid on the table and ordered to be printed.

Mr. C. D. HUBBARD, from the Committee on Banking and Currency, made the following

REPORT.

The Committee on Banking and Currency, to whom was referred the petition of the Kittanning Bank of Kittanning, Pennsylvania, for conversion into a national bank, or relief from taxation as a State bank, respectfully report :

That investigation shows the object of the petitioners to be to establish another national bank at Kittanning, they having already established one without having surrendered the charter of the old bank, as is required by the national currency act authorizing the conversion of State banks into national banks, and that the proportion of national bank capital authorized by said act for the State of Pennsylvania has already been exceeded by more than twelve millions of dollars.

The committee therefore respectfully report against the prayer of the petitioners.

JETHRO BONNEY.

MARCH 14, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Jethro Bonney, of the State of New York, praying compensation for the loss and destruction, at Plattsburg, New York, in the year 1814, of one storehouse, with goods, report:

The petitioner claims that, during the war of 1814, he raised a company of volunteers in Essex county, New York, and in September of said year, marched with his company to Plattsburg, shortly before the invasion thereof by the British. While there he procured permission from the proper military authority to open and keep a retail store within the United States military lines and erected a storehouse for a retail grocery at the east end of the bridge crossing the Saranac river, which building was worth four hundred dollars, and put therein goods to the value of about two hundred dollars; that on the 7th day of September, 1814, the building was destroyed by the American troops for the purpose of placing cannon on the site thereof in order to command the bridge and the approaches thereto, in order to prevent the enemy from crossing. That his actual loss thereby was five hundred dollars and upwards.

It is the opinion of the committee that the loss of petitioner resulted from the necessary ravages of war, and if allowed would establish a precedent for similar claims growing out of the late rebellion, so large in amount, and so doubtful as to authority as to seriously endanger the financial condition of the country.

It must also be remembered that the claimant, while an officer in the military service, entered into the business of a sutler within the lines of the army, and his building was erected for his temporary trade. It could hardly be expected, under any circumstances, that the government would undertake to insure him and his property used for sutler's trade within our lines, and under our license. It will also be remembered that the claim is fifty years old, and that the Congress is daily rejecting claims of vastly more merit growing out of the suppression of the rebellion.

The committee recommend that the claim be rejected, and they ask to be discharged from the further consideration of the subject.

JETHRO BOWNEY

March 14, 1862—Ordered to be printed

Mr. Bowney from the Committee of Claims, reads the following

REPORT

The Committee of Claims, to whom was referred the petition of Jethro Bowney, of the State of New York, praying compensation for the loss and destruction of his property, New York, in the year 1814, and for the interest and profits thereon, report.

The petitioner claims that during the war of 1812, he was a resident of volunteers in Essex county, New York, and was employed by the State of New York, as a surveyor, and was engaged in the survey of the British. While there he purchased a lot of land, and erected a building thereon, and kept a retail store within the lot. The building was destroyed by the British, and the petitioner claims that the value of the property at the time of the destruction was about two hundred dollars. The petitioner claims that the value of the property at the time of the destruction was about two hundred dollars, and that the value of the property at the time of the destruction was about two hundred dollars. The petitioner claims that the value of the property at the time of the destruction was about two hundred dollars, and that the value of the property at the time of the destruction was about two hundred dollars.

It is the opinion of the committee that the loss of petitioner resulted from the necessary ravages of war, and it allowed would establish a precedent for similar claims growing out of the late rebellion, so large in amount, and so doubtful as to authority as to seriously endanger the financial condition of the country. It must also be remembered that the claimant, while an officer in the military service, entered into the business of a tailor within the lines of the army, and his building was erected for his temporary trade. It could hardly be expected, under any circumstances, that the government would undertake to insure him and his property and his trade within war lines, and under such circumstances it will also be remembered that the claim is fifty years old, and that the Government is daily rejecting claims of vastly more merit growing out of the rebellion of the rebellion.

The committee recommended that the claim be rejected, and they ask to be discharged from the further consideration of the subject.

FRANCIS A. GIBBONS.

MARCH 14, 1866.—Read twice, ordered to be printed, and recommitted to the Committee of Claims.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

[To accompany bill H. R. No. 386.]

The Committee of Claims, to whom were referred the memorial and evidence of Francis A. Gibbons, of Baltimore, Maryland, praying for relief and to be reimbursed for one thousand and thirty-one bushels of condemned corn, as quartermaster's stores, purchased at government sale in Baltimore, on the 15th day of February, 1863, under the direction of Colonel James Belger, assistant quartermaster United States army, which was paid for at the rate of fifty-four and five-eighths cents per bushel by said Gibbons, and not delivered by the government, having had the same under consideration, report :

That at the time and place aforesaid, at a duly authorized government sale of condemned quartermaster's stores, Colonel James Belger sold to the petitioner nine thousand five hundred and thirty-two bushels of corn at an average price of fifty-four and five-eighths cents per bushel, for which he was paid \$5,774 23 on the day of sale. That on the 20th of February following, Colonel Belger delivered the corn to petitioner, who delivered the same to Wheatley, Dorsey & Co., merchants of Baltimore, at which time the corn was measured by the agents of Colonel Belger and found to be deficient in quantity of one thousand and thirty-one bushels, which Colonel Belger promised to correct and to make good by refunding the money, but, being shortly thereafter relieved from duty and dismissed from the army, he was not able to do it, and which he never did. These facts appear from sufficient evidence ; and, moreover, it is proven that the corn was put up in sacks in such a manner as to appear to contain the quantity sold, but in fact to contain much less ; and that from and after the day of sale to that of delivery the whole amount was in the possession and under the care and charge of Colonel Belger, who as an officer was responsible for the whole amount to be delivered.

The committee therefore report that the petitioner has paid to the government the sum of five hundred and sixty-three dollars and nineteen cents, for which he has received no consideration, and for which, in a lawful transaction of business with the proper officers and agents of the government, he had no protection and no self-defence ; and they therefore recommend the passage of the accompanying bill for his relief.

REPORT

OF THE COMMITTEE ON THE ARMY
IN RESPONSE TO A RESOLUTION
PASSED BY THE HOUSE OF REPRESENTATIVES
ON MAY 14, 1871

REPORT

OF THE COMMITTEE ON THE ARMY

The Committee on the Army, in response to a resolution passed by the House of Representatives on May 14, 1871, has the honor to report that it has held several public hearings and has received many suggestions and criticisms from the public. It has also held several private hearings and has received many suggestions and criticisms from the members of the House of Representatives. The Committee has also conducted a thorough investigation of the various matters mentioned in the resolution, and has found that there is a general feeling of dissatisfaction with the present state of the Army. The Committee has endeavored to ascertain the causes of this dissatisfaction, and has found that they are many and varied. Some of the principal causes are the following: First, the small number of men in the Army, which is not sufficient to meet the needs of the country. Second, the low pay of the soldiers, which is not sufficient to attract and retain men. Third, the poor quality of the equipment and supplies, which are often defective and of little use. Fourth, the inefficient system of promotion, which is based on seniority and not on merit. Fifth, the lack of discipline and order in the ranks. Sixth, the want of uniformity in the dress and appearance of the soldiers. Seventh, the want of a proper system of drill and instruction. Eighth, the want of a proper system of medical and hospital service. Ninth, the want of a proper system of transportation and communication. Tenth, the want of a proper system of fortification and defense. The Committee has endeavored to remedy these defects, and has proposed many reforms. Some of the principal reforms are the following: First, to increase the number of men in the Army to a sufficient number to meet the needs of the country. Second, to raise the pay of the soldiers to a sufficient amount to attract and retain men. Third, to improve the quality of the equipment and supplies, and to see that they are properly maintained. Fourth, to reform the system of promotion, so that it is based on merit and not on seniority. Fifth, to improve the discipline and order in the ranks. Sixth, to provide a uniform dress and appearance for the soldiers. Seventh, to improve the system of drill and instruction. Eighth, to improve the system of medical and hospital service. Ninth, to improve the system of transportation and communication. Tenth, to improve the system of fortification and defense. The Committee has also proposed many other reforms, which it believes will be of great benefit to the Army. It has also proposed that the various matters mentioned in the resolution should be referred to a select committee, which should report to the House of Representatives at an early day. The Committee has the honor to submit this report to the House of Representatives, and to recommend that it be passed.

LAND BOUNTIES TO SOLDIERS.

MARCH 16, 1866.—Laid on the table and ordered to be printed.

Mr. JULIAN, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of Charles P. Cook and others, asking for a bounty of lands for the soldiers of 1861 and 1862, in the war for the Union, and for a special bounty to the re-enlisted veterans, have had the same under consideration, and respectfully submit the following report:

According to the Commissioner of the General Land Office, about 60,000 land warrants are now outstanding, issued under various acts of Congress. These warrants will cover 6,331,860 acres. Agricultural college scrip has already been issued sufficient to cover 8,000,000 acres, which can now be bought at rates varying from sixty to seventy cents per acre; and when the States lately in revolt shall be restored, so that they can avail themselves of the benefits of the law providing for the issue of this scrip, its aggregate amount will require some 9,500,000 acres. To this must be added a comparatively small amount of Indian and revolutionary scrip; and as further affecting the price of warrants and scrip, it must be remembered that about 45,000,000 acres of swamp lands have been granted by Congress to the States, one-half of which is probably in the hands of speculators.

If we estimate at one million the number of soldiers and seamen who may fairly claim bounties on the score of a just equalization under the legislation of Congress, which is a very moderate estimate according to official statements recently made by the Provost Marshal General, one million land warrants would be thrown into circulation by the policy of land bounties. Computing that each warrant would call for 160 acres, the quantity of the public domain required would be 160,000,000 acres, or probably more than one-fourth of the entire arable portion of the same. The effect of throwing upon the market 1,000,000 land warrants would probably bring down their price to from thirty to forty cents per acre. It would certainly fall below the minimum reached after the close of our war with Mexico, when the land warrants issued to the soldiers of that war reached their maximum circulation. The sum, at all events, would be a cruel mockery of the just claims of the soldier, and the policy in question cannot, therefore, be insisted upon in his interest. If land is what he wants, he can now have it under the homestead law on terms as liberal as can well be devised consistently with the settlement and improvement of the public domain, and the growth and prosperity of the country. If money is what he wants, we believe a government bond of \$100 would be far more valuable to him than a warrant calling for 160 acres of land.

And while the committee are unable to perceive how the just and equal claims of the soldier can be provided for in the way proposed, they can see nothing but mischief in the proposition when regarded in the light of other considerations. All the evils of land speculation, to an extent as alarming as it would be unprecedented, would be the sure result. Capital, always sensitive and sagacious, would grasp these warrants at the lowest rates. Land monopoly in the United States, under this national sanction, would have its new birth, and enter upon a career of wide-spread mischief and desolation. Speculators would seize and appropriate nearly all the choice lands of the government, and those nearest the settled portions of the country, whilst homestead claimants and pre-emptors would be driven to the outskirts of civilization, meeting all the increased expense and danger of securing homes for their families, and surrendering the local advantages of schools, churches, mills, wagon roads, and whatever else pertains to the necessities and enjoyments of a well-settled neighborhood. This policy would stop the advancing column of immigration from Europe, and of emigration from the States, which has done so much to make the public domain a source of productive wealth, a subject of revenue, and a home for the landless thousands who have thus at once become useful citizens and an element of national strength. It would, in fact, amount to a virtual overthrow of the beneficent policy of the homestead law, which has, perhaps, done more to make the American name honored and loved among the Christian nations of the earth than any single enactment since the formation of the government. This consideration alone, in the judgment of the committee, settles the question against the prayer of the petition to which they are responding. Indeed, some of the advocates of land bounties openly propose the repeal of the homestead law of 1862, and that the whole of the public domain be thrown open to our soldiers and seamen. We must express our very decided disagreement with any such proposition. As we have stated, the homestead law already gives the public domain to the soldiers, in common with others, if they want it, on payment of a very small fee to defray the expenses of the land department. If they do not want it, the government cannot afford to surrender it to heartless speculators, and arrest the grand march of settlers from the Old World and the New, because they have not been soldiers in the late war for the Union. The welfare of the soldier demands no such suicidal policy. We stand by the homestead law, furthermore, as a direct source of revenue, as well as an indirect one. The late report of the Commissioner of the General Land Office shows that nearly half the claimants of land under that law grow tired of waiting for the expiration of their five years' probation, and buy their land in order that they may dispose of it as they please. This financial feature of the homestead law is one of its virtues which was not foreseen in the beginning, and which, having been proved by experience, must be added to the conclusive reasons already given for maintaining that law in all its vigor. The American people, we are sure, will not countenance any movement, direct or indirect, which looks to its abandonment.

Entertaining these views, the committee cannot report in favor of the petitioners. But while they cannot recommend the attempt to equalize the bounties of our soldiers by grants of land, they are very decidedly in favor of such equalization in money. "Equality is equity;" and the nation cannot refuse to heed this maxim in dealing with the brave men who protected the law-makers of this Capitol during the war, and saved the country itself from destruction. Nor do we accept the plea of national poverty so often urged in the light of the boundless resources developed by our war of four years. The amount required for a fair equalization of these bounties we are sure has been much over-stated—not exceeding \$150,000,000, according to intelligent gentlemen who speak in behalf of the National Soldiers' League; but whatever it may be, we think it should be provided for with no unnecessary delay. "With the soldiers there was no

task too great, no sacrifice too large, no duty too arduous, no hardship too severe; but with an alacrity that marked their earnestness in the cause, they cheerfully responded to every order, claiming none other shield than the consciousness that their banners were the emblems of liberty, of justice, and of truth." The prayer of these men must neither be denied nor evaded, when they only ask the nation for justice.

The committee therefore ask to be discharged from the further consideration of the petition named, and that it be referred to the Committee on Military Affairs, with the respectful recommendation that that committee report a bill providing for the equalization of bounties among our soldiers and seamen by an appropriation of money or the issue of bonds of the United States for that purpose.

CUSTOM-HOUSE AND POST OFFICE BUILDINGS AT JERSEY CITY AND CAIRO.

[To accompany bills H. R. Nos. 40 and 233.]

MARCH 16, 1866.—Ordered to be printed.

Mr. E. B. WASHBURNE, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the bills of the House making appropriations for a custom-house and warehouse at Jersey City, in the State of New Jersey, and to provide for the construction of a custom-house, post office, and court-house at the city of Cairo, Illinois, make the following report :

That they have submitted the question of the propriety of the passage of such bills to the Secretary of the Treasury, who is supposed to know the wants of the government in that respect. Your committee submit, as a part of their report on this subject, the letters marked "A," "B," "C," and "D." Your committee concur fully in the conclusion to which the Secretary comes, adverse to the creation of a new collection district at Jersey City, which would involve the erection of a custom-house and warehouses.

In regard to the erection of a custom-house, United States court-room and post office at Cairo, Illinois, your committee report further legislation unnecessary in that respect. Under the act of March 3, 1857, Congress made an appropriation of fifty thousand dollars for this specific purpose, and it appears from the letter of the Secretary of the Treasury, marked "D," that the amount "is still available, and at the credit of that appropriation." Your committee are not advised of the reasons why this law has not been executed by the proper department of the government. While this law is unexecuted, though upon the statute-book and in full force, it would be idle to enact a similar law, for that might remain unexecuted also.

The situation of Cairo, its large and rapidly increasing commerce, make it a point where a government building for a custom-house and post office might be deemed necessary for the public interests ; but as a new question, taking into consideration the state of the national finances, and the necessity of the most rigid and searching economy in every department of the government, your committee could not recommend a new appropriation at this time ; but as Congress decided nearly nine years ago that such a building should be erected at Cairo, and at a time when that city had not one-fourth of the commerce or importance that it now has, they know of no reason why that law should not now be executed as other laws are. If not executed, it should be repealed.

The committee, therefore, report back the bills, with a recommendation that they do not pass.

A.

TREASURY DEPARTMENT, *January 27, 1866.*

SIR: I have the honor to return herewith the bill [H. R. 40] introduced by Mr. Wright, of New Jersey, providing an appropriation for building a custom-house and warehouse at Jersey City, covered by your letter of the 19th ultimo, requesting this department to communicate to your committee any reasons why this bill should be passed; and in reply, I enclose a copy of the report made to the department by the acting collector at New York, to whom your communication was referred, in which report Hon. E. B. Washburne, chairman of Committee on Commerce, House of Representatives, adverse to the creation of a new collection district, this department concurs.

I also return the resolution introduced in the House by Mr. Kuykendall, of Illinois, inquiring into the expediency of building a custom-house and post office in the city of Cairo, in the State of Illinois.

On the 21st ultimo I addressed a letter to the surveyor at Cairo, communicating to him a copy of the resolution of the House, and requesting his report thereon; a copy of his answer is herewith enclosed.

I see no reason arising from the demands of commerce for the erection of a custom-house at Cairo.

With great respect,

H. McCULLOCH,
Secretary of the Treasury.

Hon. E. B. WASHBURNE,
Chairman Committee on Commerce, House of Representatives.

B.

CUSTOM-HOUSE, NEW YORK, COLLECTOR'S OFFICE,
December 21, 1865.

SIR: I beg to acknowledge the receipt of your letter of the 20th instant, transmitting for report copies of the communication of the chairman of the Committee on Commerce, House of Representatives, and of the bill introduced by Hon. Mr. Wright, of New Jersey, providing an appropriation for building a custom-house and warehouse at Jersey City.

I am not aware of any requirement on the score of public necessity for such expenditure. The business of this district, as it at present exists, can be readily performed in the spacious and convenient building which the liberality of the government has provided. The assistant collector at Jersey City, appointed under the provisions of the act of February, 1865, has not, I apprehend, found his duties so large as to require the construction of a public building for his use. I am completely at a loss to conceive, therefore, out of what considerations, other than the natural promptings of local ambition, this proposition can have grown.

If it is intended, however, to create a new collection district out of the cities on the western bank of the Hudson river, weighty objections at once present themselves. The impolicy of dividing by legislation places naturally and commercially identical, need not be dwelt upon. Indeed the necessity which would exist of making transportation entries as from one port to another for all goods which should be ferried across the river in bond, would inevitably result in the defeat of the mercantile aspirations out of which it had arisen.

The erection of a warehouse named in the bill referred to would be in contravention of the policy of the government, as exhibited in all its more recent

legislation. From the passage of the act of March 28, 1854, to the present time, the system of warehouses owned or leased by the United States has been abandoned, and the private warehousing system substituted. Unless it is intended by Congress to re-institute the former practice, I can perceive no reason why a warehouse at Jersey City should be erected by the government.

Many other considerations unite to impel the same conclusion. As your letter, however, asks only for the reasons "why the bill should be passed," I will not further advert to the objections thereto. I am utterly at a loss to conjecture any reason why such a bill should be passed.

With great respect, I am your obedient servant,

C. P. CLINCH,
Deputy Collector.

Hon. H. McCULLOCH,
Secretary of the Treasury.

C.

CUSTOM-HOUSE, CAIRO, ILL., *December 29, 1865.*

SIR: In reply to your letter of December 21, inquiring the number of steamers and other enrolled and licensed vessels belonging to Cairo, and their aggregate tonnage, I state the number of such steamers and enrolled and licensed vessels belonging to Cairo is seventy-nine, (79,) with an aggregate tonnage of sixty-three thousand two hundred, (63,200.)

I use two rooms for office. I pay but \$25 per month for my office room; but get it cheap as a favor, and may have to pay \$50 per month next year.

Very respectfully, your obedient servant,

D. A. BECK, *Surveyor.*

Hon. WILLIAM E. CHANDLER,
Assistant Secretary of the Treasury, Washington, D. C.

D.

TREASURY DEPARTMENT,
February 15, 1866.

SIR: In reply to your letter of the 14th instant, I have the honor to say, that the appropriation of fifty thousand dollars under act of March 3, 1857, for the construction of a custom house, United States court room and post office, at Cairo, Illinois, is still available and at the credit of that appropriation.

I am, very respectfully,

H. McCULLOCH,
Secretary of the Treasury.

Hon. E. B. WASHBURNE,
Chairman Committee on Commerce, House of Representatives.

CLERKS OF COMMITTEES.

MARCH 21, 1866.—Laid on the table and ordered to be printed.

Mr. MORRILL, from the Committee of Ways and Means, made the following

REPORT.

The Committee of Ways and Means, in obedience to the resolution of the House of February 26, asking for certain information in regard to clerks of committees, respectfully report :

That in the judgment of the Committee of Ways and Means, their clerk is indispensable for the transaction of its business ; and in relation to all the other matters included in the inquiry, they beg leave to submit the statement of their clerk, to whom the resolution has been referred ; and, so far as is known to the committee, it is truthful and accurate :

COMMITTEE ROOM WAYS AND MEANS,

House of Representatives, March 10, 1866.

SIR : In answer to the resolution of the House of Representatives calling for certain information in relation to my duties as clerk to the Committee of Ways and Means, to which you have directed my attention, and requested a statement, I have the honor to reply, that I come to the committee room at 9 o'clock every morning, frequently earlier, unless there is business of the committee to be transacted at some one or more of the departments, and remain almost invariably until the adjournment of the House ; that I have continuous employment until the session of the House at noon, and afterwards, and until the adjournment, am engaged on the various bills, resolutions, petitions, and statistics draughted, presented, filed, and considered by the whole committee or some of the sub-committees. Three nights during the week are spent at my room upon committee work. During this session I have been engaged at your room upon work of committee exclusively. I have also spent several evenings at your room upon the work of the committee.

The time I have been engaged for the members of the committee during the sessions of committee and House will not exceed ten hours for the entire session of Congress.

At the commencement of this Congress I rendered some assistance to one of the important committees of the House, which was principally done at night, and did not in any way interfere with the work of my own committee.

Very respectfully, your obedient servant,

GEORGE A. BASSETT, *Clerk, &c.*

Hon. JUSTIN S. MORRILL,

Chairman Committee Ways and Means, House of Reps.

CLERKS OF COMMITTEES.

MARCH 23, 1866.—Laid on the table and ordered to be printed.

Mr. BANKS, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the House resolution relating to the employment of clerks of committees, report as follows :

That in order to keep a correct journal of the proceedings, and a proper record of the business referred to the committee, and for the thorough examination into matters pertaining to the conduct of its business, a clerk is indispensable. Much of the business of the committee is connected with the departments, requiring such personal attendance as individual members of the committee cannot give to it; and from the State Department alone important documents are to be referred to the Committee on Foreign Affairs concerning the claims against the British government for losses sustained by American citizens, which will require the constant services of a clerk to classify, index, and preserve. The clerk of the Committee on Foreign Affairs is on duty the usual number of hours prescribed by law and custom for clerical attendance, and performs such service only for members of the committee as legitimately belongs to the official business of the committee.

OFFICE OF COMMISSIONERS

March 22, 1870 - Fall on the table and subject to be raised.

Mr. Speaker, from the Commission on Foreign Affairs, made the following

REPORT

The Commission on Foreign Affairs, in response to a resolution of the House of Representatives, passed on February 10, 1870, relating to the employment of clerks by the Department of State, report as follows:

That in order to keep a correct record of the proceedings of the House of Representatives, and for the purpose of enabling the House to keep a correct record of the proceedings of the House of Representatives, it is necessary that the House should have a correct record of the proceedings of the House of Representatives. The Commission on Foreign Affairs, in response to a resolution of the House of Representatives, passed on February 10, 1870, relating to the employment of clerks by the Department of State, report as follows:

DODGE *vs.* BROOKS.

MARCH 26, 1866.—Ordered to be printed.

Mr. DAWES, from the Committee of Elections, submitted the following

REPORT.

The Committee of Elections, to whom was referred the memorial of William E. Dodge, contesting the right of Hon. James Brooks to a seat in this House as a representative from the eighth district in the State of New York, with the accompanying papers, have considered the same and submit the following report:

The eighth district of New York is composed of the Eighteenth, Twentieth, and Twenty-first wards of the city of New York, and the election here contested was held on the eighth day of November, 1864. The official canvass showed the following result:

For Mr. Brooks.....	8, 583
For Mr. Dodge	8, 435
For Mr. Thomas J. Barr	4, 544

Giving a plurality (which elects) to Mr. Brooks of 148 votes.

The notice of contest and proofs, submitted by Mr. Dodge, are contained in Miscellaneous Documents, No. 7, of the present session. The answer and proofs of the sitting member are contained in same document, part 2d. The pleadings and proofs are very voluminous—those of Mr. Dodge filling 541 pages, and those of Mr. Brooks 330 pages, of printed matter. The allegations of contest, pp. 1–4, (Dodge,) are long, and some of them very vague and uncertain, conforming in no sense to the provisions of the statute requiring a contestant to “specify particularly the grounds upon which he relies in the contest.” The answer of the sitting member, pp. 1–5, (Brooks,) is quite as vague and uncertain, and abounds in irrelevant matter. If each were stripped of everything but that which could properly be called a “particular specification of the grounds upon which the party relies in the contest,” very little would be left in either. The contestant, however, confined his proofs to the allegations affecting four precincts only, viz: 13th district of the 18th ward, 15th district of the 18th ward, 3d district of the 21st ward, and the 7th district of the 21st ward. And the sitting member confined his own proof to a reply to that offered by the contestant in relation to these precincts. It therefore became unnecessary for the committee to examine further the other allegations on the one side and the other.

In the opinion of the committee, there is contained in the several allegations of the contestant respecting these four precincts a distinct allegation of fraud in the election, and error in the return, sufficiently specific to require an answer from the sitting member, and to form the basis of a fair trial of the facts involved in the issues thus made up. Upon these issues the committee have heard the parties attentively and at great length during more than three weeks of daily sittings, and now, after careful deliberation upon all that has been

offered of proof and argument, they submit to the House the following conclusions in respect to each of these four precincts, and upon the whole matter referred to them.

The law of New York under which this election was held required a previous register of all the votes in each precinct, and, with one exception, based on particular and specific proof, no one could lawfully vote whose name was not found when he came to the polls upon the register, together with his street and number, if he had any. (Statutes of 1859.) To effect this register the statute required the appointment annually, in each election district, by the board of supervisors, of "three inspectors, to be known as the board of registry for the election districts in which they are appointed; such inspectors to hold their offices for one year, *and to be residents and voters in the district in which they are so appointed.*" These inspectors are required to meet annually, "*at the place designated for holding the poll of said election,*" on Tuesday, three weeks preceding the general election, and organize themselves as a board for the purpose of registering the names of the legal voters of such district; choose one of their number as chairman; swear each other into office; appoint a clerk, if necessary, who shall take the oath required by law of clerks of the polls or of elections; and shall have power to continue in session, for the purposes of this meeting, viz: the making of said list, for two days, if at the annual election next prior to said meeting the number of voters in the district of which they are inspectors exceed four hundred. This board is at this meeting to make a list of all persons qualified and entitled to vote at the ensuing election in the election district of which they are inspectors, which, when completed, shall constitute and be known as the registry of electors in said district. The list is to contain the names, alphabetically arranged in one column; "the residence by number of the dwelling, if there be any number; and the name of the street or other location of the dwelling-place of each person." It is made out, in the first place, by putting upon it the names of all persons residing in their election districts whose names appear on the poll-list kept in said district at the last preceding general election, taken from the copy of that list required by law to be deposited after such election with the county clerk. In case of the formation of a new election district since the last election, the list is to be made up by taking from the said poll-list of the old district, of which the new one formed a part, the names of those on the same, entitled to vote in the new district. The list is to be completed, as far as practicable, on the day of meeting; four copies are to be made and certified to be, as far as known to them, a true list of the voters in said district. Within two days the original from which the four copies are taken, together with the old list taken from the county clerk's office, shall be placed by said inspectors in said office. One of the certified copies shall be, immediately after its completion, posted in some conspicuous place in the room in which said meeting shall be held; that is, in the room designated for holding the election, accessible to any elector who may desire to examine or copy the same. The other three copies are to be kept for future use by the three inspectors. This closes the first duty of the board of registers. A further duty is also required of them by law, and that is to meet again on the Tuesday week preceding the day of general election in their respective election districts, "*at the place designated for holding the polls of election,* for the purpose of revising, correcting and completing said list," at 8 o'clock in the morning, and remain in session till 9 o'clock in the evening of that day and the day following, in open session, where every legal voter in said district shall be entitled to be heard by said inspectors in relation to corrections or additions to said register. One of said copies is to be used by the registers in making the corrections and additions. The inspectors are thus constituted a judicial tribunal to pass upon the qualification of voters, and are required to then and there erase from the list, prepared as aforesaid, (a copy of which is required by law to have been posted up in some

conspicuous place in the room designated for holding the election since their last meeting, and where their court is then required to be held,) the name of any person who shall be proved by the oaths of two legal voters of said district to be a non-resident of said district, or otherwise not entitled to vote at the next ensuing election. Any person can procure his name to be entered upon the register, if not originally there, by appearing before said board at this meeting, giving his residence, street, and number, and subject to the pains and penalties of perjury for false answers to any inquiries touching his qualifications as a voter, and subject to challenge by any inspector or other voter, and taking the oath that would entitle him to vote at an election. This completes the corrected register which is to be used at the polls on election day. Four copies are to be made within three days after the close of this meeting, which must end in two days—one to be filed in the county clerk's office, and one to be kept for use by each of the inspectors at the election, and the name of each voter is to be checked as he votes upon one of these lists by one of the inspectors, or one of the clerks designated for that purpose. No person can vote at the election if his name is not upon the register thus prepared, unless he shall furnish to the board of inspectors his affidavit giving his reasons for not appearing on the day for correcting the alphabetical list, and also prove by the oath of a householder of the district that he knows such person to be an inhabitant of the district, giving his residence within the district. Any person whose name is on the register may be challenged, and an examination into his qualifications shall then and there be had, such examination being conducted in a manner prescribed by law, but which need not here be set out.

The house cannot fail to observe that the chief safeguard to an honest vote is the fair and honest preparation of this registry in conformity with the provisions of law. The responsibility for the purity of the election is thus made largely to rest upon the board of registry. They are judges in the strictest sense, and there is provided no appeal from their decision. To the end that there shall be other security than their personal integrity, that every safeguard against mistake honestly fallen into may be thrown around them, it is wisely provided, among other things, that they shall be "residents and voters in the district in which they are so appointed." They thus bring to the discharge of their duty a greater personal knowledge of the district, and the voters residing in it, than they otherwise could. Fraud could be much more readily detected and prevented by such men than by strangers. It is further provided that their meetings shall be public, and in a public place known to all voters in the district, viz: the place designated for holding the election, upon days publicly fixed in the statute, so that every voter in the district shall know beforehand that on given days, and at a given place fixed by statute, this tribunal will hold sessions for purposes as specifically defined in the same statute, and those purposes none other than to pass upon his right to vote. The law also requires that the duties of this board at these meetings shall be discharged by two at least of their number; that whoever acts as their clerk shall be appointed by them, and shall take a prescribed oath to secure his personal fidelity. With these preliminary remarks, the committee call attention to the subjoined facts:

FIFTEENTH DISTRICT OF THE EIGHTEENTH WARD.

The direct allegations of the contestant touching this district are as follows:

"That the fifteenth district was not legally created and established; that it was not known to bona fide residents of the district; that the inspectors of election themselves ascertained the same only by persistent inquiry on the morning of election day; that the register was fraudulently and irregularly filled with the names of your partisans, most of whom do not reside in the district; that the majority of the names therein were copied from lists handed in by a bar-keeper on the premises, an ardent democrat; that the clerk who acted for the board of registry was neither sworn nor appointed; that the district, only a portion of the original

twelfth district from which it was separated, gave more votes than the whole of the twelfth district at the election last year; that the population of the district had not during the twelve-month increased materially; that of these votes then cast for you one-third and upwards were given by parties not qualified to vote."

And the general allegation is in these words:

"That other irregularities, defects, and illegalities were permitted or occurred in conducting said election, whereby my rights as a candidate were prejudiced."

The return from this district was as follows:

For Mr. Brooks.....	221
For Mr. Barr.....	168
For Mr. Dodge.....	57

This district had been a part of the twelfth district in this ward till the July previous to this election, when it was by city ordinance set off into a new district by itself, and numbered fifteen; it borders upon the East river, and there are many vacant lots and tenement houses and factories in it. It is commonly known as "Mackerelville," and had a bad reputation in connexion with the July riots. The place for holding the polls was first designated November third, eighteen hundred and sixty-four, and was first published November seventh, the day before the election; it was designated at "James Thompson's, No. 252 avenue B."

The places for holding the polls in all the other precincts in the city were published in the public papers, by order of the city authorities, from October twenty-fourth, until the day of the election. In each of which publications was inserted, "fifteenth district, Eighteenth ward not designated," except on the last day of publication, the day previous to the election, when, for the first time, notice was given of the place where the polls would be open in this district.

The Board of Registers consisted of W. H. Hall, of one hundred and sixty-six East Twenty-sixth street; T. G. Cowen, of one hundred and eighty-one East Seventeenth street, and J. Dougherty, of one hundred and sixty-seven East Twenty-fifth street; neither of them, as the law requires, voters, or even residents in the district. They met and organized on Tuesday, the eighteenth of October, appointing one Daniel Brady their clerk, who took the required oath of office, but who, being desirous of furnishing employment for a brother of his by the name of Andrew Brady, substituted his brother in his place, who, without appointment or qualification, performed the labor and received the compensation of clerk. The law requires the board to meet "at the place designated for holding the poll of said election," but no place for holding this election had as yet been designated, and no notice had been given to the electors of the district of the place where the Board of Registry would meet. They selected their own place of meeting, but gave no notice to the electors of where they might be heard. They met at the liquor store of James Thompson, the place subsequently designated, on the third of November, after their meetings had been by law closed, as the place for holding the election. At their meeting on the first day, no further business was done except the organization of the board. Dougherty then left, and was not present at any further meetings of the board. Hall came the next day, and remained till ten o'clock, and then left till four, when he returned, spending several hours in the evening. He did the same on the third day, though the law allowed but two days for this meeting. Cowen, the remaining register, was some times present when Hall was there, and some times not; he also left on several occasions in Hall's absence, thus leaving the entire duty of the board to be discharged by the self-constituted clerk, Andrew Brady. The names were entered upon the registry; some taken from the poll-book of the old twelfth district; others, to the number of two hundred or more, were taken from time to time by James Thompson, the keeper of the liquor store, and by him entered upon an old account book as persons called at his store. This list of names upon the account book was furnished by him to the registers,

and the names transcribed by Brady upon the registry; others were entered, some by Hall when alone, some by Cowen when alone, and some by Brady, in the absence of both, and some by Thompson, the keeper of the shop.

Persons came into the liquor shop, and, in the absence of the board, entered their own and such other names as they pleased upon the registry. One of the registers accused this Brady of entering names purposely with wrong residences, and otherwise erroneously. In this manner was made up what was called and used as the registry of voters at this precinct. From the evidence it appeared that scarcely a quarter of those whose names were upon this register appeared personally before the board, and very few of the names entered upon the registry were entered in the presence or by order of more than one of the so-called registers.

The law requires a certified copy of the registry to be posted up in some conspicuous place in the room designated for holding the election. No place had been designated for holding this election; but such copy of this register was posted up in this liquor shop, but not in the place where the election was subsequently held.

Most of the business transacted by this board at its first meeting was transacted on the twentieth of October, the day after the first meeting of the board was by law closed. The Board of Registry is required to meet again, at the place designated for holding the election, on the Tuesday week before the day of the election. The place for holding the election not having as yet been designated, two of this board met at James Thompson's liquor store, as before, for the purpose of correcting the register, prepared as before stated, but without any public notice of the place where they contemplated meeting. Two days after this meeting, James Thompson's liquor store was designated by the city authorities as the place for holding this election, but no notice of this designation was given until the seventh, the day before the election took place.

The election was actually held, not at the place designated, but in a stable on the rear of the lot, "somewhere near his property." The place of voting was found with difficulty by many voters, and even the inspectors of election themselves were delayed by this difficulty in reaching the polls. The registry thus prepared became the guide of the inspectors of election, and none other was used, and parties answering to the names found upon it were allowed to cast their votes without further question or challenge. The result was a poll for member of Congress of four hundred and forty-six votes, though the largest vote cast in the whole twelfth district, including this district, the year before, was only four hundred and ninety-six, and the remaining portion of district number twelve cast also at this election for member of Congress three hundred and sixty-five votes. Thus it will be seen that the old twelfth, when divided, and by the help of this new registry, was enabled to cast at this election eight hundred and eleven votes, against four hundred and ninety-six, the largest vote the year before; and yet not a single dwelling-house had been erected in this district during the year, but, on the contrary, one tenement house had been pulled down. There had been apparently no accession of new residents in the district; no appearance of new families; no strange faces. No witness was able to account for this large accession of votes, and one of the inspectors of election, called by the sitting member, testified (page 123) that at the close of the polls, at sunset, between two and three hundred more were shut out from voting for want of time. If these latter were legal voters, as this inspector seemed to think, the large number of legal voters of the district that failed to vote must materially shake confidence in the honesty of the great vote actually cast.

The registry law requires the residence, street, and number, if he has any, to be placed upon the registry, and upon the poll-list when he votes, against

each man's name. It is, therefore, only a question of time in ascertaining the residence of every voter in the district.

The contestant, for the purpose of tracing each voter who cast his vote at this precinct, and finding his residence, if he had any, as designated upon the registry and poll-list, employed a responsible person, by the name of Dean, canvasser for the City Directory, to visit each place designated as the residence of the voter. The deposition of this Dean was presented to the committee by the contestant, and objected to by the sitting member; the ground of the objection was, that when the deposition was taken, among the others constituting the proofs of contestant, the ten days' notice required by law for the taking of this deposition had not been given. And it appears that in giving the notice the name of this witness was by clerical mistake left out of the list served upon the sitting member, and the mistake was not discovered until the day the depositions were taken, when it was too late to renew the notice. It also appears that the deposition of said Dean, offered in evidence, was taken in presence of the sitting member and his counsel, and the deponent was tendered to them for cross-examination, but they declined to cross-examine him for the reasons already stated. The committee were of the opinion that the sitting member was entitled, if he insisted upon it, to the ten days' notice, and that therefore the deposition could not be received.

The contestant then sought to prove the same thing by another witness who had obtained his knowledge of the facts from Dean himself. This was objected to by the sitting member as hearsay testimony, and the objection was sustained by the committee.

The committee therefore were without the benefit of the results of the investigations so made by Dean, however satisfactory they might be in testing the accuracy of the registry and poll-list, and ultimately the honesty of the vote. The sitting member, however, in an effort to sustain this register and identify the voters named upon it, introduced the deposition of one Brennan, (p. 309,) long a resident of the district, an official in the Catholic church near this voting place, and believed to have special knowledge of the residents. His testimony corroborates the other testimony as to the fraudulent character and inaccuracy of this register. Of a list shown him, taken from it, twenty-six, at least, with all his intimate knowledge of the district, he is unable to trace; and many more rely for identification solely on his opinion that they are names mistaken for others in which the imagined similarity is so farfetched as to become ridiculous. The sitting member further introduced the testimony of a German resident of the district by the name of Jung, most familiar with the German names on the register, who had proceeded in his testimony as far as twenty names on the list shown him, recognizing only four of the twenty as voters. When his further examination in respect to it was suspended and not resumed, The committee regard this testimony of these two witnesses, offered by the sitting member himself, as in no degree weakening, but to some extent sustaining, the charges of the contestant against this poll.

The question raised by the whole testimony submitted in reference to this precinct is, whether there was any legal election held at all in this district, or, otherwise stated, whether the return of an election so conducted can, with any propriety, be said to contain a true account of legal votes cast at this precinct.

The committee are of the opinion that there was no registry at this district; that neither of the persons appointed as registers was competent to hold the office; that the man acting as clerk acted without authority; that the mode of making up the registry itself was a fraud upon the registry law, and in no manner a compliance with its provisions; that the use of such registry at the polls as a guide to the inspectors of election contributed directly to the polling of fraudulent votes, and that the large and unaccounted-for increase of votes at this poll is directly attributed to these departures from, and violations of, plain

provisions of law, and that to accept the result of such poll so taken and so counted as the true account of legal votes only, is to sanction most inexcusable violations of important provisions of law, essential to the purity of the ballot-box. The committee are therefore of the opinion that this return falls within the principle found in cases heretofore adjudicated and which was laid down in the case of *Washburn v. Voorhees*, lately sanctioned by this House, namely: "Where an election return is so tainted with fraud that the truth cannot be deduced therefrom, the same must be set aside."

The committee are, however, of the opinion that it was competent for either contestant or sitting member to prove the casting of legal votes at this poll, even without a register; but, in such case, the voter must make special proof of his qualification to vote in a manner particularly pointed out in the statute; and that it would have been the duty of the committee to have counted all votes so proven, but that no presumption of the legality of any vote would arise from any of the proceedings or returns founded upon so illegal and fraudulent transactions as have been here shown to exist. No proof of any such votes was offered by either contestant or sitting member; nor was it claimed by either that this provision of law was complied with; but, on the other hand, it was totally disregarded. The statute of New York is express, that no vote shall be received except after a compliance with these provisions. For the committee to count votes thus cast would be for them to set up a poll in defiance of the statute provisions of the State, as well as in disregard of well-established precedents in this House. On the other hand, in conformity with those statutes and precedents, they have set aside this return altogether as fraudulent and false, as well as in conflict with express provisions of law.

SEVENTH DISTRICT OF THE TWENTY-FIRST WARD.

In this district the contestant charges that "sundry persons voted for the sitting member who were not legal voters or residents of the district—to wit, one hundred and upwards."

The official result in this district was, for Brooks, 160; Barr, 158; Dodge, 71—in all 388. There were given for presidential electors 400 votes. The largest vote given in 1863, the year before, was 202; in 1862, 234; an increase of one hundred per cent. over the vote of the previous year. This is an increase which in a small district attracts attention, and would seem to require explanation. The district is peculiar in its character, consisting principally of a stony elevation on the East river, called Dutch Hill, covered with shanties of a temporary character, not laid out into streets as occupied, nor numbered. While it does not cover any great extent of territory, its peculiarity in this respect furnishes great facilities for the commission of the frauds alleged, and, at the same time, opposes great obstacles to their detection. The people occupying these shanties, which were shown to be of the cheapest and frailest character, built on other people's land, and selling, as personal property, for \$10 or \$15 each, are not of the permanent population of the city, but are constantly coming and going, ever shifting and changing, crowding and huddling, if not hiding away from observation. The registry of voters, if honestly prepared in conformity to the requirements of law already alluded to, would with difficulty furnish direct evidence of the residence of the voter, and therefore temptation to fraud, which impunity of detection always begets, becomes strong. Into such a district, however, no great number of new families could come, bringing *bona fide* voters, without increase of habitations. Yet it was testified by a resident of the ward for the last fourteen or fifteen years, and superintendent of some seven election districts on the day of election, that there was not only no increase in the number of these shanties, but that "a great many of them had been torn away." Where, then, could this increase of voters have resided? An

old resident of the district, by the name of Geoghegan, the keeper of two liquor shops in it at the time, and formerly a member of the Board of Registry in it, at whose liquor shop the election was held, testified to the manner in which this large vote was polled.

The testimony of this witness is so full and striking that the committee call especial attention of the House to it.—Pp. 442–479, Mis. Doc. No. 7. It is too long for insertion in this report, and a perusal of it can only convey a clear understanding of the method resorted to for the purpose of swelling the vote in this district. He, and a comrade by the name of Tracy, had managed the political affairs of the entire district for many years, and, in the interest of political friends, exercised almost unlimited control over the registry, the ballot-box, and the canvass. Disagreeing with some of his political associates after this election, touching the adjustment of some matters pertaining to it, Geoghegan disclosed to the contestant the means by which this large vote was polled, as detailed in the deposition referred to. The testimony discloses that the registry was taken bodily from that of the previous year, and had been from year to year; keeping on it the names of all who deceased or removed, and adding, from time to time, not only the names of all new-comers, but those of reliable friends, without regard to their residence. On election day men come from all parts, not only of the ward and city, but from the country, and in some instances from other States, and were brought up to the polls by men who understood themselves and their business, and, answering to the names thus entered upon the registry, voted as requested by those directing the affair. Voting by substitute was the appropriate name given to this proceeding. As soon as they voted they disappeared, and returned to their residences. As no one but those under whose auspices these men voted knew of their whereabouts, or even their names, they were comparatively safe from detection.

Of the many schemes devised for defrauding the ballot-box which have come under the cognizance of the committee this is one of the most dangerous. It can be carried to almost any extent, and seems to have hardly any other limit but the capacity and disposition of those who adopt it. Geoghegan himself testifies to having procured thirty votes for the sitting member in this way, and testified to other names on the register and poll-list of men either dead, removed from, or had never lived in the district at all, but on whose names “substitutes” had voted. As to many of these names he was able to remember who personated and voted each, though he was very careful to give no clue to the present whereabouts of any, if he knew. In addition to the thirty whom he led up to vote for the sitting member, Geoghegan also pointed out thirty-five others who were simply names upon the list personated by others, having no right to vote at all, thus making, within the knowledge of this witness alone, a fraudulent vote of at least sixty-five. In relation to several others there was less distinctness and some doubt about the testimony; but from the whole testimony, there appears little doubt, if this witness is to be believed, that sixty-five fraudulent votes are thus shown to have been cast at this poll. But the testimony of this witness was attacked by the sitting member because, by his own showing, he participated in the frauds he exposes, and is thus a *particeps criminis*, and not entitled to the full credit of an unimpeached witness. This is a sound rule of law, from which the committee have no inclination to depart.

The contestant also offered the testimony of one Russell Myers, which will be found in Mis. Doc. No. 7, at page 365, and to which the committee invite the attention of the House. This witness was a deputy United States marshal, and had been an officer serving with credit in the war, and had occupied for many years positions of responsibility. He had taken the register and poll-list of this district, and spent six weeks in searching for the voters enrolled in the manner already stated. The result of his researches is contained in the deposition before the committee, to which the attention of the House has already

been called. After what appeared to the committee to be a very faithful and diligent research, commenced within six weeks of the election, he was unable to find any person to answer to any one of one hundred and nine of the names so enrolled. In this testimony he agrees with Geoghegan as to twenty-three of these names, and to this extent corroborates him. Evidence was introduced by the sitting member to meet this testimony of Myers; and in some instances the witness produced by the sitting member for that purpose was able to find a voter residing in the district and claimed by the sitting member to answer to the same name on the voting list which Myers was unable to find. Some of these were found at a different place from that indicated as their residence on the poll-list, but most of them he claimed to have identified as bearing names more or less similar in sound or orthography with those enrolled. Giving the sitting member the benefit of all thus claimed to be identified, however unsatisfactory the testimony as to some of them may be, and also deducting from the list testified to by Myers the same names included in the list of Geoghegan, in which he corroborates that witness, and which are counted in the sixty-five illegal votes testified to by him, there are still left fifty-one names on the list of Myers about which there can be no question that neither he nor any witness produced by the sitting member could find their residence, or that they had ever lived in the district.

Much of the evidence relied on by the sitting member to correct the list presented by Myers comes from the testimony of Tracy, a witness he himself called, and the associate of Geoghegan in the management of the district, as already stated, and a participant in the fraudulent voting by substitutes, as testified by Geoghegan, if Geoghegan testified truly. He knew whether the testimony of Geoghegan was true or false. His testimony is found in Mis. Doc. No. 7, Part 2, p. 234. He testified that he had resided in the ward twenty-five years; knew all about the district, and was present and heard the testimony of Geoghegan, yet he is not even asked to deny it, and is silent upon all the essential matters contained in Geoghegan's testimony, differing with him as to the residence and qualification of a single voter, or two at most. It is difficult to account for his silence if the testimony of Geoghegan, in respect to substitute voting, is false; but if that testimony was true, the silence is explained.

The committee are, therefore, of opinion that the testimony of Geoghegan stands corroborated by both Myers and Tracy; and that, from the testimony of the three, all reasonable doubt is removed, and their finding is that, at this poll, at least one hundred and sixteen illegal votes were polled. This number is left after striking from the list every name about which there can be any reasonable doubt. A careful reading of all the evidence would leave much room for difference of opinion as to many more. But the committee base their conclusions solely upon those about which they cannot themselves entertain any reasonable doubt. It will be observed that the whole poll for member of Congress in this district was only three hundred and eighty-nine, and of this number the committee are of opinion that one hundred and sixteen, at least, are fraudulent. There are no means of determining for whom these fraudulent votes are cast, beyond the thirty which is the number one of the witnesses testified that he was certain he succeeded himself in getting to vote for the sitting member, and beyond the further fact that one, at least, of the parties most actively engaged in the affair, at whose shop the election was held, and who had the greatest facility for carrying it out, testified that he was laboring in the interest of the sitting member; still, eighty-six of these fraudulent voters cannot by any safe evidence be charged to the count for either of the three candidates. They are, however, in the count, as well as thirty traced to the sitting member, and must have been counted for one of the three. What is the duty of the committee and the House with such a return? It must stand as it is, or be set aside altogether. for the means are not at hand by which the return can be purged of the fraud,

Thirty might be taken from the count for the sitting member, but eighty-six as fraudulent would still be left, and the return thus corrected would contain in it one vote in every four a fraudulent one.

The committee see no alternative but to accept the return and thus sanction the fraud, or set it aside altogether. They cannot doubt that the latter course comes within the precedents of former Congresses and of this committee and of the present House, and they therefore reject the return altogether.

THIRTEENTH DISTRICT OF THE EIGHTEENTH WARD.

The allegations of the contestant, in respect to this district, are as follows :

"That in the thirteenth district of the Eighteenth ward the voting was of such a grossly fraudulent character as to involve all concerned in it, either in participation or passive permission, and to render it impossible to sift and purge the poll; that one of the inspectors, already a partisan of yours, was bribed to break every law intended to preserve the purity of the ballot-box to accomplish your election; that this said inspector exchanged places with another partisan of yours who, unsworn, acted as inspector; that another partisan of yours, unsworn and unappointed, acted as poll-clerk; that one of the inspectors snatched republican ballots from the hands of his associates, and changed them to democratic, amid the applause of disorderly sympathizers in the polling-room; that he refused to receive divers votes intended for me, and all soldier votes, menacing with oaths and imprecations those who offered them, so that his threats and those of his sympathizers prevented, after a certain hour of the day, any citizen from offering soldiers' votes; that during the day persistent attempts were made to bribe to infidelity to his trust one of the republican inspectors; that the same inspector was, on the evening at the close of election-day, for his fidelity assaulted, struck down, and grievously injured; that in canvassing the votes the greatest frauds were perpetrated, partisans of yours unsworn acted as canvassers, double votes were counted as two each for you, incorrect ballots were counted as correct, and when neither poll-list, tally, nor ballots agreed, two or more of your partisans rushed within the enclosure, and with pen and pencil labored successfully to conceal and correct the same after the republican canvassers had, under their threats, withdrawn; that in this same district sundry persons were permitted to vote once for you, and others were permitted to vote twice, who were not qualified voters, to wit, two hundred and upwards."

This was a river district, like the 15th of the same ward, already considered, containing but six blocks of houses, and casting for Brooks, 313; Barr, 138; Dodge, 36—in all, 487. The largest vote the year previous was 347, showing an increase of nearly 50 per cent. The vote for presidential electors was still larger, being 512. The contestant offered in support of his allegations, in respect to this district, the testimony of E. H. Jenny and of John R. Hargin, at pp. 162 and 186 of document No. 7, both of them inspectors of the election, and one of them, Hargin, a canvasser after the polls were closed. A man by the name of Connolly was the other inspector of the election, and was also a canvasser. Jenny testified that Connolly, one of his associate inspectors, by threatening him and using violent language towards him, compelled him to permit ballots to be taken frequently with such rapidity that the safeguards of checking the poll-list and examination of voters could not be availed of; threatening even to eject him from his position if he interposed any delay. The witness replied that "he might do as he pleased; that it was a good place to die in defence of the sacredness of the ballot-box." The crowd about the polls encouraged and applauded Connolly; that soldiers' votes were in some instances excluded by means of the interference of Connolly and the acquiescence of the other inspectors; that one Jim Irving appeared and called out Mr. Hargin, one of the inspectors.

In the absence of Hargin, an attempt was made to put the bar-keeper of the liquor shop where the election was held, in his place as inspector, without any appointment, and that it was only prevented by the witness threatening to send for General Butler; that Connolly snatched in one instance a vote for presidential electors from the hand of the witness and substituted another; and that Connolly constantly indulged in the most violent, threatening, and obscene language towards him, in an attempt to bend him to his purposes, threatening to knock him down and thrust him out of the voting place. Hargin testified that while

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he was acting as inspector of the election he witnessed the disturbances, and heard the violent and threatening language of his colleague, Connolly, towards Jenny, as testified to by Jenny, and much more than was testified to by him—some of it language too obscene to be repeated; and that at the time Irving called him out, the interview as related by him was as follows:

"I can't remember the exact language; the nature of it was, he had asked me in to have a drink; I told him I hadn't time; he told me I was not so busy that I couldn't go in and take a drink with him. He said, 'Oh, hell! come in; I will want to see you to-morrow.' Says I, 'Well, you can see me any time.' I said he could see me up there, and he said he had something for me. He came up there on the morning of the election, I presume, in accordance with his promise. After I went out he brought me to one side, and he said, 'Here, put that in your pocket,' handing me some money. I asked him, 'What is that for?' 'What a damned fool you must be!' he said, 'put that in your pocket; take all you get and say nothing.' I put the money in my pocket; there were several gentlemen present, and I didn't hide it a bit; they saw it. As I was about going in, says he, 'Now, I want to talk to you.' Says he, 'When votes is on the boxes, don't you trouble yourself much about that registry.' Says he, 'Let your word be "down."' After I came inside I told Jenny what had occurred; he shrugged his shoulders a little bit, and didn't pay any attention to it, apparently. Mr. Irving came a little back, and says, 'Don't forget, now.' He sung out, 'Down with it,' several times himself."

"Question. What did he mean by saying 'Down'?"

"Answer. That is, down with the vote.

"Question. Were you checking the registers?"

"Answer. I was, sir; and that was the understanding I had of the expression.

"Question. What made you take this money?"

"Answer. I thought I might as well take it, and see how far Mr. Irving was going to go."

The witness further testified in reference to the snatching of ballots:

"Question. Did you notice any changing ballots that took place there during the day?"

"Answer. There was one time Mr. Jenny told me to keep my eye on a ballot he had just passed to Mr. Connolly, and I did watch it.

"Question. Am I to understand you as saying that a ballot was offered to Mr. Jenny, and that he handed it to Mr. Connolly, and then called your attention to the fact?"

"Answer. The manner of receiving that ballot was this: At the time of this occurrence Mr. Connolly had passed his book over to Assistant District Attorney Hutchings for the purpose of finding the names quicker than he could; he couldn't seemingly attend to his business of putting the votes in and finding the names quick enough, and Hutchings took the book and would sing out that they were all right. At that time, when I found that going on, I thought it was not right. I always showed the name upon my registry to Mr. Jenny, so that he might decide whether it was right; Mr. Jenny had his ballot, and Connolly says, 'You damned old fool,' says he, 'let me have that, I will distribute that,' snatching the ticket out of his hand. Mr. Jenny told me to take cognizance of that, and I kept my eye on him, and didn't think his action was all right; yet I wouldn't be positive that he did change the ballots."

And as to the threats used by Connolly towards Jenny, as follows:

"He buttoned up his coat and said he was bound to have order; Connolly put his finger to his nose, like that, (illustrating,) and said, 'Do you think, you old foggy'—using similar language to that which he used before—'that you are going to come that over me? You can't do it,' he says. He made an attempt to take hold of Jenny, and Jenny buttoned up his coat and said, 'I might as well die in defence of the ballot-box as anywhere else; it is a good place to die,' he says."

The witness, though not a resident of the district, was appointed by the other canvassers to act with them, and did without further appointment or qualification. His account of the manner of his appointment is as follows:

"The person who was appointed to act as canvasser did not appear, and in half an hour after the closing of the polls the crowd was impatient, cheering and shouting for McClellan and Brooks, and hooting and calling me a blind son of a bitch, and all such language as that; that I was trying to get away myself, and Mr. Jenny was determined to stand by the boxes until the board of canvassers took charge of them. Lynch finally suggested that I should be appointed to fill the vacancy.

"Question. Who composed your board as finally constituted?"

"Answer. John Connolly, John Lyst, and myself."

He then testifies that in the canvass he found two votes, one wrapped inside of the other, in some cases, and thinks they were for the sitting member; and in attempting to tear one of them up, he was interfered with by Connolly, who

told him, "I am chairman of the board of canvassers; all you have got to do is to stand by and look on." That he did, however, tear up one, but Connolly afterwards put the parts together, and counted the ballot with the rest; and as to other disorderly proceedings he testified as follows:

"They took the pile of tickets I had two or three times, and said they would relieve me of all labor—would not allow me to handle them at all, and Mr. Connolly counted them; Mr. Connolly told me to go out and get some oysters for them. Once I told him I didn't think it was right, although I was in the minority; he finally got a little more friendly. Once in a while, when I got a pile of tickets I wanted to look over prior to handing them to him; Lyst would put out his hand and take them from me, doing it in a half pleasant way, but a little ugly at the same time.

"Question. In the presidential tickets were there any irregularities?

"Answer. Yes; this written ticket was counted the same as one of the others. I spoke of the objection made during the day by Mr. Jenny: he said that the canvassers wouldn't allow that. It was counted the same as the others.

"Question. Did the canvassers sign the tally-books?

"Answer. The tally-books were signed before the counts were made out.

"Question. How did that happen?

"Answer. About 4 o'clock in the morning all the votes were counted, and there was some little feeling that they were not altogether right; when all the papers were collected there were some—if I remember right—I am quite sure—I will treat on it—we had twenty-three ballots that came from soldiers; we had those, as we had to send those to the supervisors—counting up those ballots, and looking over our papers after we had signed the book—allowing the clerks to make up the list, we each of us took a copy of the votes counted, and it was understood—Mr. Connolly proposed—that the clerks would take the tallies home and make out the books from that. After we had had some words upon it, there came in Mr. Beard, Mr. Cowen, Mr. Owens, and I believe a man named Kelly, and asked us how we got along. This was after we had decided that our business was done. We had signed the books in blank and left them to the poll-clerks to fill out; and they came in to ask how it was. They wanted to know if our tallies and other counts balanced. They did not balance, for the reason that the poll-list and the soldiers' votes, and the returns for the different candidates, all didn't make the proper total, and Mr. Beard, he took a pencil and some paper and commenced to show them how to finish up the books by the poll-list; and the books were passed freely around the room, so that a number of persons could examine them. I was all alone—not a single person there with me. The police did not interfere so long as no person had been struck. They said they could not, so long as there was no breach of the peace. I asked the chairman to excuse me—I would not be a party to anything of the kind—and requested officer Feagan to accompany me home from the station-house. The captain ordered him to see me home. I was told the next morning that it was half-past six in the morning when they got through, and that they regulated all the books; and on looking over the poll-list afterwards, I see they did regulate.

"Question. Do you swear that at the time you left on account of the interference of these strangers, your tally did not correspond with the poll-list?

"Answer. No, sir; none of the poll-lists corresponded—not one of the tallies held by the two clerks. They didn't foot up the same. The poll-list and other papers didn't foot up the same, for the reason that there were twenty-three soldiers votes; the poll-list only shows six at present."

In reply to this testimony the sitting member produced the depositions of Connolly and of the other canvasser, Lyst. Their testimony will be found in Mis. Doc. No. 7, Part 2, at pages 107 and 151, and the attention of the House is called particularly to this testimony. They contradict the two witnesses offered by the contestant as to all the essential matters relied on in their testimony, and both are particular in their contradiction of Hargin as to what transpired during the canvass.

The conclusion from this testimony will depend, in the mind of each member, upon the credibility given to the testimony of the witnesses on the one side and the other.

The committee are not satisfied by proof, beyond any reasonable and fair doubt, that any actual fraud was committed upon the ballot-box during the day of election, and that the conduct of the officers of election and men about the polls, testified to, should subject them to indictment for misdemeanor, rather than the box itself to rejection. The fraud upon the canvass during the night after election, as testified to by Hargin, if fully substantiated by reliable testi-

mony would require that the return made by such officers and in such manner should be set aside; but the testimony of Hargin, upon which this charge mainly rests, is so shaken by his own appearance as a witness, and the direct contradiction of Connolly and Lyst, that it would be altogether unsafe to base any judgment upon it. The committee, therefore, find that the allegations against this district by the contestant have not been sustained.

THIRD DISTRICT OF THE TWENTY-FIRST WARD.

Against this district the contestant alleges :

"That in the third district of the Twenty-first ward one hundred and eighty-eight votes were cast for me, one hundred and thirty-seven for you, and two hundred and six for Thomas J. Barr; but that, through the fraud or negligence of the canvassers, the votes correctly counted were incorrectly credited and entered upon one of the returns; that the other correct return was lost from the office of the county clerk; that under threats and intimidations on the part of your agents, and a writ of mandamus issued on motion of your attorney, after the board of county canvassers had been already a week in session, the board of canvassers for the district were forced to sign, and file a return with the county clerk, the duplicate copy of that in the hands of the supervisors of the county."

The committee were of opinion that this allegation permitted only of proof that there was error in the return, and that under it the contestant could only show that he received more or the sitting member received less votes than had been returned for either. The whole vote in the district was as follows: Barr, 206; Brooks, 188; Dodge, 137. The vote for presidential electors upon the same ticket with Mr. Dodge, was 164; and the contestant called the attention of the committee to the fact that, while he run ahead of his ticket in every other district in the ward, fourteen in number, he was returned as receiving behind his ticket in this district 27 votes; and that, while he had large interests and influential friends among his political opponents, which led him to expect an opposite result. Several witnesses testified that he drew to his support in this district large accessions from his political opponents.

The polls were held at the liquor shop of one Fitz Simmons, whose character was represented by many of the witnesses to be that of a violent and unscrupulous partisan, a fighter, engaged in the notorious July riots, violently interfering with the polls during the day, and the canvass at night, selling and distributing liquor in his shop, where the election and canvass were held, in violation of law, and boasting the next day of substituting votes from his pocket for votes in the ballot-box. In consequence of the free use of liquor one of the inspectors, who was also a canvasser, became drugged, and fell asleep before the canvass was completed. The tallies kept by the canvassers were lost. Under these circumstances the contestant canvassed the district, and produced a large number of witnesses who testified that they voted for him. He claimed before the committee that he had so proved one hundred and fifty-nine votes, while only one hundred and thirty-seven had been returned for him. It was further contended that the committee could properly infer that a larger number than this even had voted for contestant, from the obvious impossibility of finding, in a district situate in the heart of a city like New York, four months after an election, every voter who had cast his vote for a given candidate. But however probable such an inference, it could not be safely made the basis of a judgment which should rest upon evidence, not probability. From a careful examination of the testimony offered to prove for whom voters cast their votes, it appears that several of the one hundred and fifty-nine claimed by the contestant to be proved to have cast their votes for him, thirteen at least are so proved only by proving the statements of the voter made to third persons, not at the time he cast his vote, but about the time the deposition was taken, which was four months after the election. The committee are of opinion that no precedent can be found for receiving such testimony, and they decline to recommend one. This reduces the discrepancy between the return and the number proved to

nine votes, admitting that there can be no doubt as to the proof in relation to the vote of each one of the remaining one hundred and forty-six. The committee do not deem it safe under all the circumstances of this case, including the uncertain character of some of the testimony offered, and the liability to mistake after so long a time had transpired since the election before taking the testimony, to disturb the return by adding these nine votes.

As has already been stated, the testimony was confined to the four precincts which have been considered in the order treated in this report. The committee therefore submit the result of the whole case as follows:

The official return for Mr. Brooks was.....	8, 583
Deduct illegal return from 15th district, 18th ward	221
Deduct illegal return from 7th district, 21st ward.....	160
	381

Whole number of legal votes cast for Mr. Brooks.....	8, 202
The official return for Mr. Dodge was	8, 435
Deduct illegal return from 15th district, 18th ward.....	57
Deduct illegal return from 7th district, 21st ward.....	71
	128
	8, 307

Majority for Mr. Dodge.....	105
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If, however, it shall be deemed by the House a safer precedent, and more in accordance with justice, to reject from the return from the seventh district, in the twenty-first ward, only the thirty illegal votes proven to have been cast for the sitting member, leaving the return otherwise as it was made, notwithstanding the presence in it of eighty-six votes believed to be fraudulent, though for whom cast it is not known, the result would still show a majority for Mr. Dodge, as follows:

The official return for Mr. Brooks.....	8, 583
Deduct illegal return from 15th district, 18th ward	221
Deduct illegal votes cast for him in 7th district, 21st ward	30
	251

	8, 332
Official return for Mr. Dodge.....	8, 435
Deduct illegal return from 15th district, 18th ward	57
	8, 378

Majority for Dodge.....	46
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Even if the return from the seventh district, twenty-first ward, be retained altogether, notwithstanding the accumulated evidence of the fraudulent votes it contains, still the conclusion would not be changed, but the result would be as follows:

Official return for Mr. Brooks	8, 583
Deduct illegal return from 15th district, 18th ward	221
	8, 362
Official return for Mr. Dodge	8, 435
Deduct illegal return from 15th district, 18th ward	57
	8, 378

Majority for Dodge.....	16
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The committee entertain no doubt, therefore, that the majority of all the legal votes cast in the district were cast for Mr. Dodge, and in this finding they have deducted from his poll every vote about which, in their judgment, there was reasonable ground for doubt, giving the sitting member, who holds the certificate, the benefit of all the doubts that rested upon their minds after the most patient and careful examination and deliberation. In accordance with this judgment, they recommend the adoption of the following resolutions :

Resolved, That the Hon. James Brooks is not entitled to a seat in this house as a representative in the thirty-ninth Congress from the eighth district in New York.

Resolved, That William E. Dodge is entitled to a seat in this house as a representative in the thirty-ninth Congress from the eighth district in New York.

MINORITY REPORT.

Mr. MARSHALL, from the Committee of Elections, presented the following views of the minority :

The undersigned are unable to concur in the conclusion arrived at by the majority of the committee. We feel confident, from an examination of the evidence, that Mr. Brooks was duly elected as a representative in the present Congress, and is entitled to retain the seat he now holds. It will not be denied that the sitting member, having obtained the proper return and certificate of election, is *prima facie* entitled to retain the seat, and that the burden of proof is thrown upon the contestant to show, by a clear preponderance of testimony, that he received a majority of the legal votes cast, and is for that cause entitled to be received and recognized as the duly elected member of his district. On no other ground, on any recognized principles of law or equity, would this House be justified in expelling a member duly returned as elected, and giving his seat to the party contesting.

With all due respect to the majority of the committee, we respectfully ask that the members of this house will examine the evidence for themselves; and we feel great confidence in making the assertion that this evidence not only fails to show that Mr. Dodge, the contestant, is entitled to the seat, but that it shows most conclusively that he has no honest or just claim thereto. On the contrary, we assert that if Mr. Dodge had been duly returned as elected, it would be the duty of the House, upon the evidence laid before it, in vindication of the purity of elections and of its own character and honor, to turn him out without hesitation, and send him back to his home branded with the most emphatic condemnation of the House. To give a man a seat here by a vote of this body who, by the most lavish and shameless use of money, has endeavored to defeat a fair and honest expression of the electors of his district, and to corrupt the very fountains of the elective system, would fix a stain upon the House itself which neither time nor repentance could easily eradicate.

It is proper here to remark that the evidence in the case is very voluminous, and with the briefs filed make up about one thousand pages of printed matter. The evidence is contained in two volumes, (Miscellaneous Doc. No. 7, parts 1 and 2;) the first containing the evidence on the part of Mr. Dodge, and the second the evidence taken by Mr. Brooks. The first is referred to in this report as D., and the second as B.

The irregularities charged, if they existed, are not shown to have been produced by the procurement or connivance of Mr. Brooks, or to have inured in any way to his benefit. In all the districts assailed by the contestant, a clear majority of the officers of the election (including registers and inspectors) were his own party friends, while none of them are shown to have been the personal or partisan friends of Mr. Brooks. In all the vast array of evidence there is no proof whatever that illegal votes were given or returned for the sitting member. Vast sums of money were used in the most shameless and scandalous manner to control the election by direct and indirect bribery; but this was done by the contestant or his friends, and not by Mr. Brooks. There is no attempt, by proof, to show any wrong or fraud on the part of the sitting member. There

is no pretence that Mr. Dodge could, under any possible circumstances, obtain a majority of the votes of the district he claims to represent. It is, indeed, *admitted* that he would, upon a fair vote, fall short of a majority by several thousand votes. If, under all these circumstances, this house gives him the seat he claims, it will only prove, as we think, that we are living in most extraordinary times, where the ordinary results cannot be relied upon from any stated premises. We repeat that, if there were irregularities, they were not produced by the connivance or procurement of Mr. Brooks. If there were frauds and bribery, they are chargeable exclusively to Mr. Dodge and his agents; and the principle is too well settled that a man can in no case take advantage of his own wrong, and that in all cases a party asking relief must be able to come into court with clean hands.

SEVENTH DISTRICT, TWENTY-FIRST WARD.

The allegation here is, (D. 3, specification 10 :)

"That *sundry persons* voted for Mr. Brooks who were not legal voters or residents in the district, viz., one hundred and upwards."

The act of Congress (1st section, statute of 1851) regulating notice as to the contest of elections reads, in conclusion, thus :

"And in *such* notice shall specify *particularly* the grounds upon which he, the contestant, *relies in the contest.*"

The sitting member at the start protested against the illegality of such a notice, (B. 2,) and argued throughout that its *generality* was not only in violation of the statute, but of such a nature that it could not be traversed, save by a denial as "*sundry*" broad as the *sundries* alleged; thus substituting in lieu of a plea "a stump speech on both sides." The object of the act of Congress forbidding such *sundry* generalities, and prescribing therefor a *particularity*, was to prevent a surprise upon the sitting member, (Leib's case, C. T. E., p. 165,) and *not* to give uneasiness to a sitting member upon slight grounds, (Varnum's case, C. T. E., p. 272.) Courts acting upon contested elections require the parties complaining to *specify*, because otherwise they would be converted into a mere election board, (Littell *vs.* Robbins, C. T. E., Bartlett, 138.) It is obvious that in a contested case like this, where the contestant is a man of immense wealth, who it is proven has lavished large sums illegally upon the election, a sitting member, unless equally wealthy, has no chance of meeting him in a contest, if, *after* the election, the election can all be gone over again under some of the forms and protection of the State law, under the pretence of such a "*sundry*" notice as to sundry persons, "one hundred and upwards." The Committee of Elections, and through their chairman, Mr. Dawes, (Kline *vs.* Verre, Bartlett, p. 383,) is emphatically committed not only against these *generalities*, but against this particular word "*sundries*," in the notice. The chairman there remarked :

"The common law pleading, 'you did, and I did'nt,' would have every element of 'particularity' in it, which is contained in such a specification. The only precedent under existing laws approaching this in vagueness and generality, which has come under the notice of the committee, is that of Vallandigham *vs.* Campbell. But there is this to distinguish that from the present one. In that case the sitting member took no exception to the notice of contest for want of particularity when served upon him, as in his reply thereto; but, on the other hand, filed his own answer in the same general terms. * * *. Whatever might have been the opinion of that Congress as to the sufficiency of these specifications, it might well have been held in that case, indeed it could not have been held otherwise, that any such defect in specification or answer had been waived by the parties. But in the present case (Brooks?) there could be no waiver. The exception to the sufficiency of the notice was taken at the earliest practicable moment (by Brooks,) (and) *it was also renewed at the taking of the testimony, and at every stage of the hearing.*"

The whole reasoning of the chairman of the committee, and all his legal citations, (p. 384,) go to show that such a "*sundry*" allegation as this is in utter

violation of the statute, while they earnestly put the contestant upon guard in a solemn warning.

"The committee," says the chairman, "have not felt at liberty to pass over this entire disregard of well-settled rules and statute enactments without notice, *lest proceedings like these should grow into PRECEDENTS*, and parties to contests should hereafter meet committees, not *for the purpose of trying prepared and definite issues*, but for the purpose of making vague and uncertain complaints, and indulging in endless and unsatisfactory discussions.

The majority of the committee now propose to disfranchise, under the "sundry" notice, the whole district where the official result was thus declared—

BROOKS.

BARR.

DODGE.

160

158

71

though the contestant, in his preliminary brief of things proven, expressed an apparent satisfaction if but thirty votes were thrown out!

"I claim to have proven," said that brief, "that the registry, poll, and canvass of the seventh district of the Twenty-first ward were so tainted with illegality and fraud that the will of the legal voters thereof cannot be ascertained, and the official returns must be rejected; *or, if not rejected, that your official poll in that district must be diminished by thirty illegal votes, so proven by me.*"

The majority of the committee have not listened to the suggestion of only 30, but would disfranchise 389 voters in all.

It is admitted, in this district, that the registration and reception of the votes were by political friends of the contestant. The board of registration and of inspection stood thus:

Registers.

2 REPUBLICANS.

1 DEMOCRAT.

Inspectors.

2 REPUBLICANS.

1 DEMOCRAT.

The registry clerk was a republican. All these officers were sworn officers, and there is no allegation or proof to the contrary. The two republican registers, Taylor and Pendrall, were *not* called by the contestant, as witnesses, to impeach the registry, while the democratic register swears "*there was no irregular or improper conduct—the register united in the certificate we ALL SIGNED.*" Nor were the two republican inspectors of the election brought up as witnesses by the contestant, though it was fully in his power, while the sitting member brought up the democratic inspector (Farrell) to swear "every thing was done according to law." The republican poll clerk (Beekman) swears "he was there all day, and that the election was conducted in order, and that he did not see anything out of the way." (B. 303.)

Now, here is an election where 389 voters—(500 or 600 on the registry)—(B. 228)—are thrown out, though verified, *and sworn to*, by four republican officers and two democrats—the republicans having the control and government of the votes in this ratio of two to one! It is needless to say that the sworn officers of an election, regularly and legally appointed, cannot be thus *perjured* but by the most overwhelming testimony. The whole burden of proof is on the contestant that all his political friends and enemies were perjurers. There was no allegation in the notice that they were perjured, or *to be* proven to be perjured; but, on the contrary, constant use was made of one of these officers (Warren S. Taylor) as a drummer, or runner, in this contest, active and energetic for the contestant, Mr. Dodge. (D. 117, 128.)

The only attempt made to fasten this "perjury" upon the officers of the election comes from two persons: the first, an outlaw by the name of Stephen Geoghegan; and the next, a man named Russell Myers, *alias* "Butch" Myers, a so-called "government detective" or spy, who, in order to show voters did not live in the district, inquired, when the draft for the war was pending, mainly among the women—the wives, sisters, or daughters of the husbands, brothers, or fathers to be drafted! Well known among those whom he was spying, both in his antecedents and presents, of course he could get no information if in honest pur-

suit of it; while the proof is, that he purposely ignored the existence of some of the most prominent men in the district, such as Colonel Austin, (B., 238,) and of soldiers who gallantly fought in our army; one of them (Kelly, B., 293) pronouncing him a "perjurer." Names entered upon the poll list such as *McLarney*, he insisted upon finding, though *McAlarney* was the real name. The sitting member has furnished a most laborious and careful analysis of every name which Myers alleges to be "unknown" or "unfound," save five, in a list of one hundred and nine; thus:

On Myers's list.....	109
Accounted for, as proven by the sitting member	104
Leaving only.....	5

Which is wonderful, considering that the search was made, months and months after the election.

The other witness to disfranchise this district is Stephen Geoghegan, an outlaw by his evidence, (D., 449,) utterly unworthy of the least attention, save what the report of the majority may attach to it. Geoghegan is pronounced by the contestant, Mr. Dodge, (B., 147,) to have a character "desperate," "unscrupulous," and "sunk," and is shown to be (B., 283) a "bruiser," a "rough," "that no respectable man would have anything to do with." Mr. Phelps, the counsel for Mr. Dodge, before Judge Brady, (the sitting judge before whom this evidence was taken,) swears (D., 493:)

"If Geoghegan had not acted in *our interests* I should think it were right, *that he should be indicted and punished.*"

John M. Tracy, in detail, (B., 235,) disposes of all Geoghegan's testimony. The sitting member in his brief (pp. 17, 18, 19, 20, 21, 22, 23) has set name against name and confuted every word Geoghegan or Myers uttered as to votes for "dead men," "substitutes," or "fraudulent names." Tracy was deprived of the power of adding to his testimony at midnight, when by law the time for taking testimony closed, though Brooks begged for this additional time, which Dodge refused, (B., 318.)

This seventh district, Twenty-first ward, is on the East river, and is a district mainly made up of blasters, or boatmen, or workmen, and in order to verify the truth and accuracy of the vote, the sitting member thus contrasted it with three Fifth avenue districts, the richer districts on the other side of the ward.

CONTRAST OF VOTES IN THE DEMOCRATIC AND THE REPUBLICAN DISTRICTS.

7th (this dem., called Dutch Hill) district.				12th (Fifth avenue, rep.) district.			
1864.		1865.		1864.		1865.	
Brooks.....	160	Slocum, (dem.)....	221	Brooks.....	155	Slocum, (dem.)....	122
Barr.....	158	Barlow, (rep.)....	68	Barr.....	28	Barlow, (rep.)....	168
Dodge.....	71			Dodge.....	310		
	—	Total.....	289		—	Total.....	290
Total...	389			Total...	493		
	289				290		
	—				—		
Falling off...	100 from 1864 to 1865.			Falling off...	203 from 1864 to 1865.		

TWO MORE FIFTH AVENUE DISTRICTS.

13th district, (Fifth avenue,) 21st ward.				14th (Fifth avenue) district.			
1864.		1865.		1864.		1865.	
Brooks.....	134	Slocum, (dem.)....	141	Brooks.....	135	Slocum, (dem.)....	142
Barr.....	27	Barlow, (rep.)....	289	Barr.....	26	Barlow, (rep.)....	216
Dodge.....	394			Dodge.....	330		
	—	Total.....	430		—	Total.....	358
Total...	555			Total...	491		
	430				358		
	—				—		
Falling off...	125 from 1864 to 1865.			Falling off...	133 from 1864 to 1865.		

ANOTHER CONTRAST.

	Vote of 1864.	[New revised registry—1865.
Seventh (dem.) district.....	389.....	367
Twelfth (rep.) district.....	493.....	337

Thus demonstrating that so far as we can judge by analyses and comparison of the poll of 1865 for State officers, with the poll of 1864 for Congress, the seventh (Dutch Hill) district was an honest and juster poll than the three Fifth avenue wealthy districts.

The minority of the committee, under this statement of facts, cannot well imagine a greater injustice than the disfranchisement of these 389 voters, while richer districts, in a worse apparent position, are allowed their full vote, especially the thirteenth, which the sitting member contests upon the specified ground of abandonment by the canvassers of the ballot-boxes pending the canvass. To do this is substantially to say, *labor and poverty must not vote, and capital and property alone shall elect members of Congress.*

But is it possible that lawyers, in the House or on the committee, can accept as legal testimony such *indirect* witnesses as Geoghegan and Myers, as to the fact whether or not some voter lived on *this* side of the street or *that*, *this* number or *that*, when the voter himself could have been called as a witness, or some party professing to know, or that some Stev. Geoghegan (D., 409) should swear away, through Myers, the existence of this man or that, without any effort save through this Myers to find the missing man?

All of Myers's testimony, or nearly all, is of this character. Even Geoghegan disproves Myers, (Frank Bradley, D., 243,) while Tracy throughout cuts up his testimony root and branch. Pronounced "a perjurer" by Kelly and another (B., 293, 294,) is not the legal maxim applicable to Myers throughout—*Falsus in uno, falsus in omnibus?* When Myers got his information from women and children, (D., 402,) "women entirely," no effort was made to bring up the women! Not one was notified and summoned to appear! Is it possible that an old member of Congress, in a district which is anti-republican by thousands, can thus be *sworn off* from the floor of the House, not even by women and children in their own persons, but through Myers or Geoghegan, as one or the other distils his information for the committee of Congress through his own crucible or still? Why were not the women and children themselves brought up in lieu of Myers and Geoghegan? Such "hearsay" evidence is of the most objectionable and weakest character.

FIFTEENTH DISTRICT, EIGHTEENTH WARD.

The twelfth allegation of the contestant is—

"That the 15th district was *not* legally created and established," (with a general averment of frauds.)

But not *specifying* the 15th district of the 18th ward, and thus leaving the sitting member to guess *that* was the district meant. In all the other allegations of the contestant *the ward* where the *district* is contested is specified. Objection was taken to this at the start, (B., 3,) and persisted in throughout, and the sitting member did not know what district was meant till contestant, a very few days before the closing of the testimony, disclosed what he meant.

The allegation further is—not what the majority of the committee give the contestant the disfranchisement of the whole district—but—

"That of these votes there cast *for you*, ONE-THIRD and upwards were given by persons not qualified to vote."

The vote stood—

BROOKS.	BARR.	DODGE.	TOTAL.
221	168	57	446

The majority of the committee throw out 446 votes, when the contestant *specifies* in his claim that only "one-third and upwards" of the Brooks votes, viz: 74, or about 74. The contestant thus is happy in having a better case made out for him than he made out for himself in his pleadings, for the whole district is disfranchised by one fell swoop! 446 men are annihilated at once, where the victor claims, "killed and wounded," only 72 and upwards!

This district is an East river district, where the great gas-works of New York are located, (D., 214, B., 124,) a sort of promontory projecting into the East river and surrounded on two sides by water, where schooners, sloops, barges, and water-craft of all kinds abound, full of men whose real habitations are in their boats. A district like this, full of workingmen, naturally changeable in the residences of its voters, was pounced upon by the contestant to disfranchise, (only *in part*, however,) and a person was "secured" (D., 501,) by the name of Las Casas Dean, who starts doubts of his own sincerity by swearing (D., 502)—

"That deponent is a man of religious principle."

The result of Dean's being thus "*regularly secured*" (D. 502) and paid, (D., 502,) was that in a district of 446 votes, he alleged he found:

Non-residents.....	163
Vacant lots.....	44
Dead.....	3
Total.....	<u>210</u>

While the majority of the committee find, or seem to find, 446—the whole number of non-residents, or, on vacant lots, or dead! Dean's six weeks' hunt, under pay, kills off in the district only 210, while the committee *dispatch* 446! The contestant's start of one-third and upwards, 74, Dean increased to 210, while the committee, more happy in discovery than either Mr. Dodge himself, or Mr. Dean, make out a far better case for the contestant than he or his *employé* made out for themselves!

This Las Casas Dean, it is in evidence, was never "noticed," as the act of Congress requires, to appear before the examining Judge Brady, (D., 365.) His testimony comes all through Mr. Phelps, the counsel for Mr. Dodge, before the contestant, and is all "hearsay." Dean *tells* Phelps, and Phelps swears, Dean *told* him, and Dean swears he (Dean) *was told*, even "by the children" in the district, (D., 502,) that these children did not know some of the voters. The evidence thus comes to us through three or four sieves: 1st, women and children and others in the district; 2d, Dean; 3d, Phelps; and none of them could be even examined by the sitting member, for Phelps knew nothing but what Dean told him, and Dean knew nothing but what others told him. None of the *original* sources of testimony, the real live people in the district, or the women or the children, were summoned or subpoenaed as witnesses! Mrs. Boyle, Mrs. Patrick Sullivan, and Mrs. Finnerty, (D., 504,) *told* Dean some things; but none of these *Mesdames* were summoned as witnesses, none of the children, even, ever turned up, to attempt to make something of this very novel and more extraordinary mode of *extinguishing* 446 votes in one of the populous districts of New York. Mr. Phelps, the counsel for Mr. Dodge, after carefully keeping Dean and his affidavit in the back ground till the night of March 29, 1865, (the time for taking all testimony then closing, April 3, in four days only,) *then* offered to put him (Dean) upon the stand! The ingenuity of the counsel was superb! The legal time for giving notice had expired, and four days only were left for Brooks to hand in his testimony, while Dean was furnishing him with a list of two hundred and ten names to employ his whole time! Brooks had two thousand witnesses then to examine, and desired to poll the whole district, (see names, B., 6, 7, 8, 9, 10, 11, 12, 13, and 318,) and the ingenious counsel having then

demonstrated against every district that had gone for Brooks in his seventeen allegations, (D., 4,) would divert him from defence of them all by this sudden raid upon this Fifteenth! Against this system of guerilla tactics, Mr. Anthon, counsel for Mr. Brooks, protested, (D., 365,) as an evident means of fraud on the part of the contestant. The whole of this *hearsay*, illegal proceeding is unmatched in the chicanery of contested elections. The testimony, the affidavit of Dean, is not legally, then, worth the paper it is written on. (1 Greenleaf on Evidence; Chief Justice Marshall, 7 Cranch, *et passim*.) But nevertheless the sitting member in his brief has carefully and most laboriously analyzed and investigated this test of Las Casas Dean's two hundred and ten names, and, wonderful to say, he has been able, some eighteen months after the election, to show one hundred and eighty-nine of them as *proven* to be living human beings, in actual residences, or, as not in any way *disproven* by the affidavit of Dean. (See brief, 38.) Such a trace of voters in a laboring city district, after such a lapse of time, is unparalleled in the searches for voters in contested elections.

It cannot be, then, that the majority of the committee rely upon the affidavit of Dean's two hundred and ten names to disfranchise four hundred and forty-six voters! Upon what, then, do they rely?

The officers of the election were republican two to one, thus:

Registers.		Inspectors.	
Republicans.....	2	Republicans.....	2
Democrat.....	1	Democrat.....	1

This fact is admitted by the chairman of the committee, and is proven (D., 211, B., 82.) And here it may be remarked that it is an admitted fact that in all the odd districts, such as this, the fifteenth, (and the seventh of the Twenty-first ward,) the registers and inspectors of election stand as two republican to one democrat, while it is shown by Hardy and Ely (B., 259, 260, 181, 182) that Brooks, not acting in either the republican or democratic organizations, had not a single officer of the election appointed as friendly to him. These officers were equally divided among the Tammany Hall democrats and the republicans, organizations both unfriendly to Brooks. Hence, what chance of fraud for Brooks? Or why disfranchise all his 221 voters, when it is attempted to prove no fraud, that may not have been a Dodge or a Barr as well as a Brooks fraud?

It was attempted, however, and for the first time, in committee, to establish as fact that the registers did not reside in the particular election district of the fifteenth, while it is admitted, they reside in the election assembly district. It is not proven specifically that all do not reside in the particular election district, nor is it alleged in the specification, (D., 3,) where the allegations are very broad. It is averred also that the clerk was "not sworn nor appointed." But it is not averred or specified, as the act of Congress requires, if such were to be made an issue, that the register did not reside in the particular fifteenth election district. Hence, under that act of Congress, no such issue can be made at this late day, and no such issue was ever presented to the sitting member to traverse.

No greater injustice (a sense of comity to the committee alone forbids us to say no greater outrage) could be committed than throwing out 221 Brooks voters only because of an alleged informality in the appointment of registers *in*, and *over*, a thorough democratic district, these registers being republican, and their appointment being made by a republican party organization. Decency, honor, every just impulse, forbid us to say republican registers were purposely appointed by the republican party, residents out of the fifteenth district, deliberately to disfranchise the district. No such conspiracy against the rights of man ever entered the heads of the republican supervisors of New York, who appointed them. The discovery of the mode of disfranchisement was not even made by the eager contestant, in his seventeen counts of allegation. The invention was due to the refreshing, suggesting, and inspiring air of Washington.

But fortunately the law and the decisions of the courts of law in New York, and of the court of appeals there, forbid the contestant to avail himself of such an alleged informality. The statute, it is true, requires the registers "to be residents and voters in the district in which they are appointed," but in what district? The election *assembly* district, not *the* particular fifteenth district of the Eighteenth ward. The statute creates a board to be known—

"As the board of registry for the election district in which they are appointed ;"

But avoids the use of the word "*election*" in adding :

"To be residents and voters in the district in which they are appointed."

It is believed to have been the popular construction of the law, and practice under it, to select registers from the assembly district, and not from the particular election district, leaving both parties to pick out their keenest men in the whole assembly district to act as inspectors of registry. It is not in *direct* evidence—the question of residence or non-residence of the registers not having been raised in the specification of the contestant—that in several of the Dodge election districts, two to one of the registers, were *not* residents of the district, which in all gave him 1,500 or more votes, but it is, in the indirect evidence of the official report (1864, vol. 2) of the board of supervisors, where the names of all the registers are given, and in the New York Directory, that two to one of the registers, that created the registration, in some of these districts, were *not* actual residents in them, though residents of the assembly election district. All these facts might, and probably would, have been shown in the evidence, if the question of residence had been raised in the pleadings of the contestant.

That such was the *custom*, and the popular construction of the act, is obvious from the subsequent explanatory statute of 1865 (chapter 740, p. 1463) recognizing and adopting the custom. The act is as follows :

"No person shall be eligible to be, nor shall he be appointed inspector of registry and elections, or canvasser for any election district of the city and county of New York or city of Brooklyn, unless he shall be a qualified voter within the *assembly* district in which such election district is situated, and liable to any duty in courts of record therein, nor unless he can read, write, and speak the English language understandingly, but such person shall *not* be required to be a resident or voter in the election district for which he shall be appointed."

This law was probably enacted to remove all doubts as to the construction of the old act, and to add statute sanction to the common custom. All the registers of this, the fifteenth district, were residents of the assembly district, and acted *de facto*, in good faith under the law, or, if not under all the *forms* of the law, under the color of law, and their action was accepted and ratified without comment or cavil by the city board of canvassers, the State board, upon all the tickets, electoral, gubernatorial, judicial, assembly, sheriff, county clerk, &c. No keen eye but that of the contestant, and his only when illuminated in Washington, ever before then detected any flaw.

But admitting all that is claimed in regard to the proper construction of the statute of New York, it is but directory, and a departure from its provision does not vitiate the election. The leading case on this question, *The People vs. Cook*, 4 Selden R., p. 84, with the authorities there cited, settles this question conclusively. It is there held that "the neglect of the inspectors to take *any oath* would not vitiate the election, although it might subject those officers to an indictment," and "that the acts of public officers, being in, by color of an election or appointment, are valid so far as the public is concerned." The whole object of the election laws is to secure as far as practicable a full and fair expression of the will of the electors. To reject the whole votes because the officers of election fail to comply with every prescribed regulation would be, as was remarked by one of the learned judges in New York, to place a higher value on the statute regulation than on the right of suffrage itself. It is further held in the same case, *People vs. Cook*, that the time prescribed for the adjournment of

the poll is merely directory, and that "where the statute requires that the inspectors shall appoint two clerks who shall take the constitutional oath, this is directory." If no clerks can be procured, the inspectors must perform the duty of clerks. The election must not fail. And the failure of clerks to take the oath will not render their acts void. "The occasional interference of more inspectors than three does not prejudice the return, since the whole election was conducted by inspectors who were at least such *de facto*." "An officer *de facto* is one who comes into office by *color* of a legal appointment or election. His acts in that capacity are as valid, so far as the public is concerned, as the acts of an officer *de jure*. His title cannot be inquired into collaterally." The authorities upon this point are numerous and uniform. Guided by these principles, we feel constrained to insist that no irregularities are proven in this case that ought in the least to taint or vitiate the election or returns so as to affect the rights of the sitting member.

But as the law settles the legality of the vote in the district, so settle facts, irresistible and overwhelming. Under the new revised registry act (act of 1865) of New York the registration of voters was thoroughly reviewed and revised, and in that act, the tendency was to cut off the foreign vote, supposed to be mostly democratic, by exacting the show of naturalization papers before the registry, and by other rigid demands. This new revised registry of 1865 and the vote of 1864 and 1865 demonstrate, *mathematically*, the following facts:

A CONTRAST.

<i>Democratic—15th district, 18th ward.</i>		<i>Republican—3d district, 18th ward.</i>	
Revised registry, (1865)	530	Revised registry, (1865)	658
Vote in 1864	446	Vote in 1864	765
Increase of registry over vote	84	Decrease of registry in 1865 from the vote of 1864	107

The 1864 registry in the *democratic district* is thus demonstrated to have been correct by the revision of 1865, while the *decrease* of 107 in a single year throws great doubt over the republican district.

ANOTHER CONTRAST.

"Mackerelville (so nicknamed) and Fifth avenue polls contrasted.

<i>"Mackerelville" poll—15th district, 18th ward.</i>				<i>Fifth avenue poll—3d district, 18th ward.</i>			
1864.		1865.		1864.		1865.	
Brooks	221	Slocum, (dem.) ..	373	Brooks	192	Slocum, (dem.) ..	206
Barr	168	Barlow, (rep.) ..	45	Barr	62	Barlow, (rep.) ..	357
Dodge	57			Dodge	511		
		Total	428			Total	563
Total	446			Total	765		
	428				563		
Falling off		18 in "Mackerelville."		Falling off		202 in Fifth avenue.	

YET ANOTHER CONTRAST.

<i>Democrat—15th district, 18th ward.</i>		<i>Republican—2d district, 18th ward.</i>	
Revised registry, (1865)	530	Revised registry of 1865	583
Vote in 1864	446	Vote in 1864	739
Increase of 1865 registry over vote of 1864	84	Decrease of registry in 1865 from vote of 1864	156

The 1864 registry of the democratic district is here again, as in contrast with the republican district, demonstrated to be correct.

AND YET ANOTHER CONTRAST.

"Mackerelville" (so nicknamed) and another Fifth avenue poll.

15th district, 18th ward.				2d district, 18th ward, on Fifth avenue.			
1864.		1865.		1864.		1865.	
Brooks	221	Slocum, (dem.) .	373	Barr	70	For sec'y of state:	
Barr	168	Barlow, (rep.) .	45	Brooks	199	Slocum, (dem.)	199
Dodge	57			Dodge	462	Barlow, (rep.) .	310
		Total	428	Scattering	8		
Total	446					Total	509
	428			Total	739		
					509		
Falling off	18			Falling off in '65			
				from '64	230		

There is no answering such overwhelming facts as these but by declaring the two great Dodge districts to be as "fraudulent," as the Brooks district is alleged to be.

It is alleged that as this district was set off from the 12th, its near neighbor, its vote was excessive, because the old 12th, in 1863, gave but 496 votes; whereas, in 1864, the two districts gave 863 in all. The *new* district, the 15th, as represented on the map, has a territory over three times greater than the old 12th, and a *new* territory in which population was, naturally, all the while increasing, with two of its four boundary lines on navigable water, were lined with water-craft of all kinds, full of legal voters, whose only domicile was there. It is alleged that no new buildings have been put up to hold this increase of population, but is proven (B., 126) that 500 men are employed in the gas-works there, most of whom, doubtless, live in the vicinage; and it is proven, too, these gas men "sometimes sleep there," entitling them to a vote there; some stone-yards have tenements in the rear occupied by families. Such new districts in great cities, as in new settlements in the west, often have mere shanties for men to live in—up one day, and down another. It is proven, too, (D., 214,) "voters came out of tenement houses in large numbers." It is proven, too, (D., 181,) that in such like districts "a great many slept in coal-bins that voted." It is proven also that when the polls closed, with 700 names on the register, (D., 216,) the line of voters was full to vote; when, under the law, in the short days of November, the ballot-box was shut up, "a full line of voters were shut out," (D., 216,) (B., 122,) 600 votes could have been legally taken, instead of only 446, and that 80 democrats were kept out, (B., 123.)

It is alleged, too, this was the headquarters of the July rioters, for which there was not one word of proof in the citation therefor. (D., pp. 119, 368; Dodge's brief.) It is alleged that the district was not legally created, fully and officially refuted, (B., 129,) and admitted. (D., 537.) The official verification of the New York records of the common council demonstrates the legality of the creation of the district. (B., 129, 130.) It is alleged that one of the republican registers, Dougherty, "appears—then disappears forever." It is proven, (D., 224, 225,) all the registers acted together; all certified. (D., 223; B., 83.) "I did not," swears the democratic register, Cowan—and how could he, in the minority, as he was, two to one?—"enter any name in the absence of Mr. Dougherty, register," or Mr. Brady, (republican clerk.) (B., 93, 96.) "*Mr. Dougherty was present pretty much all the time, except second session.*" (B., 86.) Mr. Cowan, the democrat, was not there all the while. (D., 67.) Mr. Hall was there most all last session. (D., 67.)

Extract from Alderman Hardy. (B., 263, 264.)

"Question. Is it not the practice to add the names of persons who do not appear in person and give their names to be registered? Answer. Some do and some do not register such persons.

"Question. What is the general practice? Answer. I suppose it is to add them.

"Question. Suppose that names were brought in and vouched for by persons known to the inspectors of registry as respectable inhabitants of the district; is it the practice to register them or not? Answer. That is according as they can make their certificate. If they are satisfied that the persons whose names are so made known to them are voters, *they are required to add the names, that they may make a true certificate.*

"Question. Do you think that an inspector of registry could properly make that certificate, if he had omitted to include the name of a person who was vouched for to him by a well-known and respectable elector of the district? Answer. *I don't think he could.*

"Question. I want you to state whether the inspectors of registry are generally all present during the whole of each session. Answer. *Almost universally they are not.*

"Question. What is the general rule that prevails in regard to taking names in the absence of inspectors of registry? Answer. Where they leave one or two in attendance they generally make an arrangement *that all names shall be taken on slips of paper, and when they meet in the evening they add these names in the presence of the full board*; most of the names added are taken at the second session; as a general thing they are not added at the first session."

It is alleged that the acting clerk (Brady) in this district was not sworn. This negative is not proven. Hall (republican register) swears, (D., 219,) "I think he was sworn." Mr. Brady was appointed by the republican register, voted for Lincoln for President, and voted against Brooks, (D., 269-67.) He swears again, (D., 271:)

"I am pretty sure I did not put any on the registry list except such as I was told to put on by the inspectors of registry, or the names of persons who came in and registered themselves."

Extract from Brady, 273.

"Question. Then you don't know the name of a person in the district who you knew was not a legal voter in the district? Answer. No, sir."

There is no law making it imperative for the board of registry to appoint any clerk. They may do, if they please, all the work themselves. The language of the act is, (New York election law, p. 28:)

"The same board *may, if necessary*, on the day or days of the making a correction of such lists, appoint a clerk to assist them in the discharge of the duties required by this act."

May, if necessary, or may not, if not necessary! If Brady was not sworn, was he appointed? Hall, republican register, asks, (D., 220,) "An appointment is a man generally sworn, isn't it?" The presumption is, that he was sworn; but whether sworn or not, the case of the "People vs. Cook" shows that such a failure in a mere clerk or scrivener for the registers, cannot disfranchise a district. The real question is, was the registry correct? and Hall, the republican register, swears it was, though a very unwilling witness, because of his desire to serve Mr. Dodge in this contest. (D., 220.)

Extract from Hall, (D., 222.)

"Answer. I generally came there about 4 o'clock and stayed there until 9, all the time.

"Question. Did you enter any names on the registry that you believed not to be names of legal voters in that district? Answer. I can't tell; I can't answer that; I don't know the names of many in that district.

"Question. Did you enter the name of any man knowing him not to be a legal voter in that district?—any one that you knew was an illegal voter? Answer. That's a question I can't answer, because I can't tell who the men were that lived in that district.

"(Question repeated.) Answer. Well, I don't think I did."

An effort is made to show that the register entered in mass a great many names, and that only one-quarter of those whose names were registered appeared personally. The laws of New York required no such personal presence to be registered. In a new district like this the law especially provides.

Extract from New York election law, p. 23.

"In case a new election district shall be formed, the said inspectors SHALL enter on the list the names of such persons entitled to vote in the new election district, whose names appear upon the poll-list of the last general election held in the district, or districts, from which said new election district is formed."

The duty was imperative to enter, without personal presence, the names of all the old voters, in the new 15th—three times as large a territory, as the map shows, of the old 12th district, from which it was taken.

An attempt is then made to show that James Thompson handed in a large number of names, which he had a right to do, and to vouch for, it ever being optional with the registers to receive them or not. Thompson confirms Hall and Cowan, registers, (B., 297 :)

"I entered no name upon the book of registry of the district; I kept them till the board of registry met, and handed them to the registers. They set them down on the book. Persons that I knew pretty well."

And the registers did not do this hastily, but after due deliberation.—(B., 297.)

An attempt is made by W. B. Chase, one of the republican inspectors, to show that his associate republican inspector, Thomas J. Hall, was not sworn in till "about an hour" after the opening of the polls.—(D., 378.) This Chase figures so disgracefully in a church scene, in being the tool of the outlaw Geoghegan to introduce two Peter Funk "voters" (Coughlin and McLaughlin) upon the stage, (B., 146 and 147, and D., 379, 386, 387, 388, and D., 462, 463, 464,) that it is hard to say whether Geoghegan or himself is most to be credited. If, *nos-citur a sociis* is as good in law as in life, Chase is no more to be credited than Geoghegan; but Chase was only "informed" when Briggs, the supervisor, swore Hall in! Hall himself was never summoned as a witness by the contestant. All we know of him is that he swore, the day of the election, to do his whole duty. This indefatigable Chase again discovers that his democratic associate, Brennan, did not produce his "credentials." Did Chase produce his? Brennan himself was upon the stand, (D., 122) but counsel for contestant made no question of his right, from the start, to act as such inspector. The evidence shows Brennan to have been appointed by the supervisors, and Chase must have known it from the start.

The greatest injustice was shown all day to the democratic voters in this district by the indefensible conduct of this Chase in delaying the voters. Thompson swears, (B., 300.) This district had a registry of over 700, polled only for congressmen, 446, (official return.) "I knew a great many whom we did not register, and who were legal voters."—(B., 300.)

"Question. (B., 298.) Was the entire vote of the district polled on that day? Answer. No, sir; there were close to 400 votes lost.

"Question. How many were waiting at the closing of the polls for an opportunity to vote? Answer. I think there were close to 200.

"Question. What do you consider would be the legal vote of the district? Answer. I consider 800 or upwards."

Extract from Brennan, (B., 122.)

"Answer. Chase and Hall were republicans.

"Question. Did they take the management and control of the election? Answer. Chase was chairman of the board.

"Question. How was the voting in relation to rapidity? Answer. Very slow, in consequence of Mr. Chase. In the morning the polls were not opened until ten minutes after the time, in consequence of waiting for Mr. Hall; Mr. Chase proposed to wait for Hall, and I remonstrated with him, and went on myself and opened the polls.

"Question. Then, how did the voting proceed during the day? Answer. Very slow, in consequence of the many questions asked by Mr. Chase, and a great deal of trouble he caused.

"Question. Were any votes challenged that day? Answer. Mr. Chase challenged many himself.

"Question. Did Mr. Chase insist upon putting oaths and delaying such voters, notwithstanding he had no right by law to challenge any vote? Answer. He did so.

"Question. Were votes rejected that day by the inspectors? Answer. Mr. Chase rejected a great many, in consequence of wrong numbers; the voters were willing to swear, if they had seen the original copy of the registry, their residences were put down right, but on the election day they were found to be wrong.

"Question. And their votes were rejected? Answer. Mr. Chase rejected those.

"Question. How many votes were left out? Answer. I should judge eighty votes, in consequence of wrong numbers."

Extract from Brennan, (B., 126.)

"Question. You think Mr. Chase intended to delay the election? Answer. Yes, sir.

"Question. Why? Answer. From his every action in keeping men so long and asking so many useless questions."

Extract from Brennan, (B., 128.)

"Question. How did Mr. Chase find the names? Answer. Very slowly, sir.

"Question. He was chairman of the board, and kept the registry list also? Answer. Yes, sir.

* * * * *

"Question. As chairman, it was his duty to distribute the ballots to the other inspectors? Answer. Yes, sir."

"Question. And in addition, he undertook to find the names on the registry? Answer. Yes, sir. I remonstrated against his doing both, but was overruled by the other inspectors."

Extract from Thompson, (D., 298.)

"Question. Was the entire vote of the district polled that day? Answer. No, sir; there was close to four hundred votes lost.

"Question. How many were waiting at the closing of the polls for an opportunity to vote? Answer. I think there were close to two hundred.

"Question. What do you consider would be the legal vote of this district? Answer. I consider eight hundred or upwards."

The population of the district.—Extract from Brennan, (B., 12.)

"Question. You think there are as many as five hundred men employed in the gas-works? Answer. I cannot swear to the number employed there. I know that in the neighborhood we have a society that numbers seven hundred, a greater portion of whom work in that district, and I judge from that.

"Question. Do they all sleep in the gas-works? Answer. Sometimes they work off and on, and sometimes sleep there.

"Question. Do they all live in this fifteenth district? Answer. All of them. I will state, in relation to these gas-works, that some of the men are on in the daytime and some on in the night, and they must have residences."

See Cowden (B., 273) on tenement houses and population. Eight hundred and thirty-six tenement houses are in the Eighteenth ward. "These houses have four or five to twenty or more families in them." Fifty men, voters all, are allowed, by law, to bunk in one engine-house. (Pickett, B. 271.)

Extract from Dimond, (B., 75.)

"Question. Have you had opportunities to form an opinion as to the increase of population in this city during the past year or two, and the effect which such increase, if there has been an increase, and the increase in rents, have had in causing people to live in closer quarters, and in more crowded apartments? Answer. I have had the opportunity of any ordinary individual—that is, ordinarily engaged in business. I should say that the high prices of rents and other things would tend very materially to crowd people together.

"Question. Has there been an increase in the price of rents? Answer. Yes, sir; I have experienced that.

"Question. You are a master mechanic and employ laboring men, and you hear them talk in your shop, and you know the opinions and views which prevail among them. From the observation that you have had in such ways, what is your opinion in regard to tenements being more difficult to procure than formerly, and in respect to poor people living more closely together than formerly? Answer. There is a much greater demand for tenements than there has been in former years. There has not been the same amount of buildings erected to supply the ordinary demand, and it has tended very materially to crowd tenements, more particularly in consequence of the high price of rents; rents went up from forty to fifty per cent. on tenement property."

MONEY IN ELECTIONS—THE LAW ON BRIBERY.

The New York statutes are very explicit in forbidding the use of money in elections for anything but *printing* votes, hand-bills, and other papers, or for conveying sick, poor, and infirm voters to the polls. The entertainment even of electors is forbidden, or promise to pay for entertainment, or the furnishing of money to any person to procure attendance at the polls, or engaging to pay

money to compensate persons. (1 vol. R. S., p. 144.) Nothing can be made more explicit than that statute. The fuller words of the law are (R. S., vol. 1, title 7, sec. 4)—

"If any person shall by BRIBERY, menace, or *other corrupt means*, or *device whatsoever*, either directly or indirectly, attempt to influence any elector of this State in giving his vote or ballot, or deter him from giving the same, or disturb or hinder him in the free exercise of the right of suffrage at any election within the State, and shall thereof be convicted, such person so offending and convicted *shall be adjudged guilty of a misdemeanor*, and be fined or imprisoned according to the discretion of the court before which such conviction shall be had, such fine in no case to exceed five hundred dollars, nor such imprisonment one year."

The sixth specification of the sitting member against the contestant is (B., 4)—

"That, in violation of the law of the State, you used in the election large sums of money yourself, or your agents and friends, for bribery and frauds, and corruptly purchased votes, or voters to vote for you, or, when that could not be done, to vote for T. J. Barr."

The best proof of this is the evidence of Mr. Dodge himself and one of his counsel in the case, Mr. Phelps. The latter gentleman, in the closest confidence of Mr. Dodge, swears :

Extract from Phelps, Dodge's counsel, (D., 499.)

"Question. What do you know as to the expense of the election to Mr. Dodge? Answer. Of the gross amount of the expenditure to which he was put for election purposes I have no idea, except that it was very small considering the size of the district.

"Question. You have no idea what the amount was? Answer. No, sir; except that I would be pretty sure that it wasn't \$15,000, and wasn't \$12,000—wasn't \$10,000, I think; I don't think it was as much as \$10,000."

Mr. Dodge himself, in his remarks before the House, upon the printing of the testimony in the case, admitted substantially his own personal expenditure to be about \$6,000. (See Congressional Globe of February 3.)

Extract from Dodge, (B., 143.)

"Question. Can you tell me what amount of money you disbursed for your election purposes?

"Answer. I can't possibly. I did not spend half as much as I expected I should.

"Question. Can you give me the figures within a thousand dollars? Answer. My impression, from the best data I can get at, is that it was somewhere from four to five thousand dollars in all.

"Question. Is that independent of the contributions of your friends? Answer. Yes, sir.

"Question. Give me your best impression as to what amount of money was used by your friends for your election purposes?"

In answer to which Mr. Dodge submitted the following two subscription papers, the only two in his possession:

EXHIBIT No. 4.

The undersigned agree to contribute the sum set opposite their respective names to aid in the election of William E. Dodge, esq., to Congress from the 8th congressional district. And we will pay the amount so contributed to John H. Sherwood, William H. Lee, and Le-grand B. Cannon, as finance committee:

Marshal O. Roberts, paid J. H. S.	\$1,000
Edward Learned, paid	250
A. W. Griswold, paid to J. H. S.	100
Henry J. Stewart, Nov. 18, 1864, paid	250
H. & J. W. Coggill, paid W. C.	100
John A. Livingston, (B. H. & L. paid A. L.) paid	100
David Dowes, paid	100
Livermore, Clews & Co., paid	100
Morris Ketchum, paid J. H. S.	100
Mr. Shiffilen, paid to J. H. S.	50
Cortland Palmer, paid to J. H. S.	50
	2,200

EXHIBIT No. 5.

The friends of William E. Dodge, esq., take pleasure in contributing the amount set opposite their names to aid in his election to Congress. And we will pay said sum or amount to John H. Sherwood, William H. Lee, and Legrand B. Cannon, to be used for said purpose:

John H. Sherwood, 12 East 40 st., paid.....	\$100
John J. Phelps, paid.....	100
Sackett, Belcher & Co., paid.....	100
Lee, Blin & Co., paid.....	100
George Bliss, paid.....	100
E. T. Tefft, paid.....	100
Lathrop & Luddington, paid.....	100
A. R. Eno, paid.....	100
I. & J. Stuart & Co., paid.....	100
Levi P. Morton, paid.....	100
D. Willis James, paid.....	100
Legrand B. Cannon, paid.....	100
J. N. Phelps, paid.....	100
Norman White, paid.....	100
Morris Ketchum, paid.....	100
Samuel B. Scheffelin, paid.....	100
O. D. F. Grant, paid.....	100
George R. D. Fant, paid.....	100
George Griswold, paid.....	100
W. W. De Forest, paid.....	100
David Hoadley and friend, paid.....	100
U. A. Murdoch, D. G. B. C., paid.....	100
E. D. Morgan, D. G. B. C., paid.....	200
A friend.....	500
	2,900

The sums of money expended by Mr. Dodge himself, and known to be expended by or through him, are then admitted to be—

Mr. Dodge, personally, (see Congressional Globe).....	\$6,000
First subscription list.....	2,220
Second subscription list.....	2,900
	11,120

But the sitting member shows—and which seems all to be verified by the testimony—the following expenditure:

Money paid by Dodge at Legrand Cannon's, (B., 41).....	\$500
Bargain of Cannon, Cowden, and Dodge with Barr, (B., 40, 59, 145-6,.....	2,000
Enormous (so-called) "printing bill," (B., 46).....	2,008
Amount Cowden received from Dodge, (B., 48).....	3,500
Payments to the three wards, \$500 each.....	1,500
An undiscovered subscription paper from G. B. De Forrest, (B., 42).....	500
An undiscovered subscription paper from G. B. De Forrest, (B., 42).....	100
An undiscovered subscription paper from M. O. Roberts, (B., 42).....	100
Paid by Cowden voluntarily, (B., 55).....	\$150 or 200

Two discovered subscription papers.

Exhibit No. 4, p. 320, M. O. Roberts leading off with \$1,000.....	2,200
Exhibit No. 5, p. 320, John H. Sherwood leading off.....	2,900
Total discovered.....	15,508

Extract from Mr. Phelps, (D., 492.)

"IT WASN'T AN EXPENSIVE ELECTION AT ALL. WE WOULD HAVE MADE IT FAR MORE SO IF WE HAD ONLY KNOWN AS MUCH AS WE KNOW NOW."

Extract from Legrand Cannon, (B., 31.)

"Question. What was said at these meetings held at the junction of Fifth avenue and Broadway on the subject of finances?

"Answer. The *general tone* of it was to have SUFFICIENT MONEY TO CARRY MR. DODGE IN as the successful candidate, and TO BEAT Mr. Brooks."

The expenditures of these great sums of money by a contestant of immense wealth is astonishing to members from the rural districts. They would not only buy farm after farm in the west, homestead after homestead, but of themselves alone be "riches" to the sturdy farmer and mechanic and laborer of the country. We have never before known of such expenditures on an election, save among the wealthy landed aristocracy of England, or, among London capitalists, who go down into the country to buy rotten boroughs for a seat in Parliament.

It is all something novel to country members here, whose election expenses seldom run over one or two hundred dollars, and often are but fifty dollars. We doubt whether a boroughmonger in England ever sold a people there at such cost as Mr. Dodge and his friends paid to carry this district. No calamity could well be greater to the American people than in any way to countenance the purchase of seats in Congress by such expenditures of money. If it is not frowned upon now when first here attempted, or if this precedent of corruption and bribery be established, the happy possessors of our immense national debt will soon be buying their way into Congress, and not only regulate the taxation of Congress to pay themselves, but also the rates of interest they are to be paid by the sweat and labor of the land. But there can be no two opinions in ethics or in politics on the enormity of the crime in this use of money, while the law of New York clearly and emphatically pronounces it a MISDEMEANOR, and SENTENCES the guilty party—not to a seat in the House of Representatives.

VIOLATION OF THE SABBATH BY CONTESTANT AND FRIENDS.

And what aggravates this MISDEMEANOR is, the specification (B., 4) that a corrupt bargain was made with the Tammany Hall candidate, T. J. Barr, against Mr. Brooks, to give him (Barr) two thousand dollars, and that bargain was made upon the Sabbath day, and of which, thus made, the contestant himself became cognizant! (B., 166, 47, 54, 55, 56, 57.)

Extract from Legrand Cannon, (B., 35.)

"After a long negotiation with Mr. Barr, we asked him how much money it required for him to man the polls, provide boxes for ticket distributors, &c., and he said an election in this district would cost about \$5,000; I think it was something of that kind. We then proposed, if it was necessary, to furnish him \$2,000—Mr. Cowdin and myself.

"Question. What further was said? Answer. Mr. Barr considered that matter for some time, thinking, he said, that it might be sufficient; he would make all the attempt he could, and we agreed to furnish that amount if it was necessary, and if he was elected we agreed to give him a thousand dollars more."

Extract from Elliot C. Cowdin, (B., 47.)

"Question. Did you pay him, Barr? Answer. I paid him two thousand dollars.

"Question. On that occasion? Answer. Yes, sir.

"Question. When he came to your store? Answer. Yes, sir.

"Question. In what did you pay him. Answer. In bank bills."

From Cowdin, (B., 54.)

"Question. About what time was it that Mr. Barr saw you on the day that you paid him this money? Answer. I should think in the middle of the day.

"Question. What time was the interview on Sunday? Answer. *It was after church*; whether in the morning or in the evening I do not remember; if my memory serves me right, he came on Sunday about dinner-time, and I had some friends to dinner, and he said that he would come again, and he came in the evening; I think it was something like that, but I cannot remember now.

"Question. Something like the evening? Answer. I think in the evening."

From Cowdin, (B. 59.)

"Question. You paid Mr. Barr two thousand dollars? Answer. Yes, sir.

"Question. And you received from Mr. Dodge two thousand dollars? Answer. I received just two thousand dollars; it so happened that it was the same amount.

"Question. Was the two thousand dollars received by you from Mr. Dodge for any other purpose than to reimburse you the two thousand dollars you had paid Mr. Barr? Answer. Well, I will not say it was for that purpose directly.

"Question. I ask if it was for any other purpose? Answer. Not so far as I am concerned, it was not."

Mr. Cowden denies, however, that Mr. Dodge was then cognizant of the Sabbath day contract. "It was a month after election before he could have known anything about it."

Extract from Mr. Dodge's testimony, (B., 166.)

"Question. When was your last payment to Mr. Cannon on account of the election? Answer. I didn't pay anything to Mr. Cannon except on election day.

"Question. How much was that? Answer. Five thousand dollars. (Mr. Dodge said in committee this was a mistake, and should be five hundred dollars.) He returned me, after election, I think, three hundred and sixty dollars.

"Question. For what purpose was that? Answer. I don't know; it was some expenses for carriages—for hack-hire; he said he might want it in the course of the day.

"Question. When was your last payment to Mr. Cowden? Answer. I have not the date; but my impression is that it was some three or four weeks after election.

"Question. And the amount? Answer. IT WAS EXACTLY TWO THOUSAND DOLLARS.

"Question. Was any statement made at that time for what purpose that two thousand dollars was? Answer. He wrote me that he had a bill to pay, and that Mr. Cannon had stated that funds had been put in my hands.

"Question. Do you know whether that two thousand dollars was for any special purpose? Answer. I have heard since it was to pay Mr. Barr.

"Question. Did you know that at the time? Answer. I SUSPECTED IT, BUT DIDN'T KNOW IT."

It is obvious here that Mr. Dodge knew of the Barr-Cannon-Cowden Sabbath-day contract, and that his \$2,000 ratified and indorsed it. The contestant in this case, who is crying out "fraud," "fraud," against the sitting member, comes before the House, then, not with clean hands as the law requires, but as guilty of a high misdemeanor under the statutes of New York, and as a breaker of the Sabbath—the Sunday statutes of New York, (see R. S., art. 8, secs. 65, 66, 67, 68, 69, 70,) as well as the statutes of most of the States of this Union, and, above all, of one of the ten commandments:

"Remember the Sabbath day to keep it holy."

THIRTEENTH DISTRICT, TWENTY-FIRST WARD.

The sitting member moved to strike out this district in consequence of the violation of the election law by the canvassers. The vote was:

DODGE.
394.

BROOKS.
136.

BARR.
27.

The law is, (vol. 1, R. S., page 130:)

"As soon as the poll of an election shall have been finally closed, the inspectors of said election shall proceed to canvass the votes. Such canvass shall be public, and shall not be adjourned or *postponed* until it shall have been FINALLY completed."

The canvassers in this district were Mr. White, Mr. Baker, and Mr. Fox. D. W. Clarke, a lawyer, (B., 18,) swears that White and Baker, about nine or ten o'clock p. m., got up and walked over to Parker's, a liquor store, nearly opposite, where they tarried from a half to a whole hour, and no canvasser was left behind to watch the ballot-boxes. "Ballots were lying around on the table," (B., 19,) fifty in number. Mr. Clarke expressed the opinion then to Senator Connolly, his companion—

"That they had no right to go away; *that it was against the law*, and that they were liable to have the district thrown out."

"Frauds (adds Mr. Clark) could have been undoubtedly committed in their absence. (B., 21.)

Senator Connolly (B., 97) confirms all this testimony of Mr. Clarke. The Congress ticket, he swears, had not been counted when the canvassers left. Ignatius Fox, the third canvasser, (B., 294,) swears he went with the two other canvassers, White and Baker, to Parker's to get refreshments; "they were gone twenty minutes;" "the poll-room was full of people;" a policeman and two or three other citizens were left within the enclosure where the ballots were. Fox thinks the congressional ticket had been counted before they went out, but no final count had been made, "simply counted in tens" A liquor store was within fifty feet of the place, where liquor was sold all day.

The law was here clearly and palpably violated by the adjournment and postponement of the canvass, while the canvassers were gone out across a broad avenue to drink and eat; and there was no security for the congressional ballot-box though counted in stacks of tens or uncounted. Because of his absence, it is alleged and specified (B., 4) that the vote was made unnaturally to count thus:

McClellan.....	185	Lincoln.....	376
Brooks.....	134	Dodge.....	394

Dodge thus 18 ahead of Abraham Lincoln, and Brooks and Barr combined 24 behind McClellan.

Now, every legal exaction which would throw out the seventh district, Twenty-first ward, or the fifteenth district, Eighteenth ward, would, *a fortiori*, throw out the thirteenth district Twenty-first ward, because *there*, in that most critical period of an election, the law was palpably broken by the wilful absence of the canvassers from the ballot-boxes, left in the custody, not only of strangers to the law, but of persons unknown. Correct the return, then, by throwing out these three districts, and the result would be thus:

	Brooks.	Dodge.
7th district, 21st ward.....	160	71
15th district, 18th ward.....	221	57
13th district, 21st ward.....	134	394
	515	522

Brooks's official majority is 148, from which deduct 7 votes lost in three districts thrown out, and the result would be 141 majority for Brooks.

All of which is respectfully submitted, with the following resolution:

That William E. Dodge is *not* entitled to a seat in the House as a representative in the 39th Congress from the eighth district in New York.

S. S. MARSHALL.
WILLIAM RADFORD.

WIAH INDIANS (U. S. INDIAN)

The Wiah Indians are a small tribe of the U. S. Indian race, living in the State of California. They are located in the northern part of the State, in the vicinity of the town of Wiah. The tribe is composed of about 100 individuals, and is one of the most primitive of the U. S. Indian tribes. They are known for their skill in the manufacture of baskets, and for their knowledge of the art of hunting. The tribe is said to have been discovered by the Spaniards in the year 1775, and has since that time been under the protection of the United States Government. The tribe is now being studied by the Bureau of Indian Affairs, and it is hoped that the results of this study will be of great value to the Government and to the people of the United States.

MIAMI INDIANS OF INDIANA.

MARCH 27, 1866.—Laid on the table and ordered to be printed.

Mr. WINDOM, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the resolution directing an examination, and report by bill, or otherwise, who constitute the tribe of Miami Indians of Indiana, respectfully ask leave to report:

That they have had the subject under consideration, and after a careful investigation of the facts and the law appertaining thereto, they are satisfied no further legislation is necessary on the subject. Your committee are of the opinion that the tribe of Miami Indians of Indiana consists of the persons named in the list or pay-roll, as added to by the Secretary of the Interior, under the act of June 12, 1858. In confirmation of this opinion the committee beg leave to append hereto the opinion of the Attorney General of the United States, given under date of October 26, 1865, and ask that the same may be printed as a part of this report:

ATTORNEY GENERAL'S OFFICE,
October 26, 1865.

SIR: In the treaty betwixt the United States and the Miami Indians, (see United States Statutes at Large, volume 10, page 1099,) it is provided in the Senate amendments, "That no person other than those embraced in the corrected list agreed upon by the Miamies of Indiana, in the presence of the Commissioner of Indian Affairs in June, 1854, comprising 302 names, as Miami Indians of Indiana, shall be the recipients of payments, annuities, commutation moneys and interest. thereby stipulated to be paid to the Miami Indians of Indiana, unless other persons shall be added to said list by the consent of the said Miami Indians of Indiana, obtained in the council according to the custom of their tribe."

By the 3d section of the act of June 12, 1858, (sec. 11, Statutes at Large, 332,) it is enacted, "That the Secretary of the Interior be, and he is hereby, authorized and directed to pay to such persons of Miami blood as have been heretofore excluded from the annuities of the tribe since the removal of the Miamies in 1846, and since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded; and he is also authorized and directed to enrol such persons upon the pay list of said tribe, and cause their annuities to be paid to them in future."

In October of that year, pursuant to the authority so given, the Secretary of the Interior directed that the names of 68 persons should be added to the roll of the Miami Indians of Indiana, and on the 12th of November, 1862, the Secretary added other names for participation in the then future payments to the Miami Indians of Indiana, and the persons whose names were so added in 1858 and 1862 have regularly received their annuities, but the tribe in council

never did, according to their custom, consent to the addition of those names or to their being paid.

In the act of March 3, 1865, (see Sessions Acts, 1864 and 1865, page 546,) there are appropriated, "for interest on two hundred and twenty-one thousand two hundred and fifty-seven dollars and eighty-six cents, uninvested, at five per centum, for Miami Indians of Indiana, per Senate's amendment of 4th article treaty June 5, 1864, eleven thousand and sixty-two dollars and eighty-nine cents."

In your letter of 12th of October you ask me whether, in view of the treaty and legislation aforesaid, any part of the amount appropriated by the act of March 3, 1865, can be paid to persons other than those embraced in the corrected list aforesaid, and to the increase of families embraced in said list?

In order to answer this question, it must be considered, first, whether the act of 1865 repeals or modifies the act of 1858; and, secondly, if it does not repeal the act of 1858, whether payment must be made to the persons named in the corrected list mentioned in the treaty and representations only, or to them and the persons whose names have been added by the Secretary of the Interior under the authority given in the act of 1858.

As to the first branch, so far as the Miami Indians are concerned, the act of the 3d March, 1865, is one of appropriation only; such an act cannot, by construction or implication, be made to repeal or modify previous permanent legislation. The act of 1858 is not a simple act of appropriation, but expressly authorizes and directs the Secretary of the Interior to add other names to the corrected list mentioned in the treaty, and commands that the persons so added shall be upon the pay list, and that their annuities be paid to them in the future. The act of 1865 does not, in terms, repeal the act of 1858, nor are the provisions of the two in such positive conflict that both cannot stand. When the act of 1865 was passed, Congress not only had the treaty before it, but the act of 1858 also, and the fact that the authority given under that act had been exercised. The reference in the act of 1865 to "the Senate's amendment to the 4th article treaty June 5, 1854," was to show the reason for and object of the appropriation.

An intention to repeal or modify the act of 1858, and reverse the action of the government thereunder, cannot be inferred from such a reference in such an act.

The act of 1865 does not repeal the act of 1858.

As to the second branch, a treaty is a contract betwixt powers independent, and, for the purposes of the treaty, equal under our form of government. Treaties are made by the President and Senate. Some treaties require legislation by Congress before they can be executed. This is known to the contracting parties, as money cannot be drawn from the treasury except under an act of appropriation. All treaties that cannot be performed without the payment of money must be executed after Congress shall act, and then in the mode, and only in the mode, prescribed by Congress. The Executive and the judiciary are powerless to execute such treaties in any other way. It is by virtue of the act of Congress, and not of the treaty, that the money is obtained from the treasury.

A treaty is a contract of the very highest character, and invested by the Constitution with the dignity of an act of Congress, but with a character no higher and a dignity no greater than an act of Congress made in pursuance of the Constitution. A right which is vested under either cannot be divested by an act of Congress, and yet it is in the power of Congress, by refusing the necessary appropriations, to defeat the performance of a treaty. Treaties made by the President and the Senate, that require legislation to execute them, are thus brought under the consideration and are subject to construction by Congress. When Congress has considered and construed them, the several depart-

ments are bound by such construction. The President and Senate, who made the treaty, join in the act which gave it construction.

Of the construction given to a treaty by Congress, no one has a right to complain except the power with which the treaty was entered into, and such complaint must be made to the political power of the government, and not to the organ charged by Congress with the execution of an act.

These views are sustained, as I think, by the cases of *James Turner vs. The American Baptist Missionary Union*, 5th McLean, 344, and *Charles G. Taylor et al. vs. Marcus Morton*, 2 Curtis, 454.

I am therefore of the opinion that payment must be made according to the list or pay-roll as added to by the Secretary of the Interior under the act of June 12, 1858.

I am, sir, very respectfully, your obedient servant,

JAMES SPEED,
Attorney General.

Hon. JAMES HARLAN,
Secretary of the Interior.

MILITARY POST AT VERMILLION LAKE.

APRIL 5, 1866.—Laid on the table and ordered to be printed.

Mr. SCHENCK, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of the legislature of the State of Minnesota, asking for the establishment of a military post at or near Vermillion lake, in that State, would respectfully report:

That full authority is already vested in the War Department to establish military posts at such points as the military authorities may deem advisable. The committee, therefore, see no occasion for legislation on the subject on the part of Congress, and ask that they be discharged from the further consideration of the memorial, and that the same be laid upon the table.

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME

CHAPTER I OF THE FIRST SETTLEMENT

IN THE YEAR 1630, A COMPANY OF
PURITANS, LEADED BY JOHN
WINSTON, ARRIVED AT BOSTON
FROM ENGLAND.

THEY FOUND THE PLACE ALREADY
SETTLED BY INDIANS.

THE FIRST SETTLEMENT

THE FIRST SETTLEMENT
WAS MADE BY A COMPANY
OF PURITANS, LEADED BY
JOHN WINSTON, IN THE
YEAR 1630. THEY FOUND
THE PLACE ALREADY
SETTLED BY INDIANS.
THEY WERE RECEIVED
BY THE INDIANS, AND
WENT TO LIVE IN THE
INDIAN HUTS. THEY
WERE VERY WELL
RECEIVED, AND WENT
TO LIVE IN THE
INDIAN HUTS. THEY
WERE VERY WELL
RECEIVED, AND WENT
TO LIVE IN THE
INDIAN HUTS.

CYRUS LELAND.

APRIL 5, 1866.—Laid on the table and ordered to be printed.

Mr. SCHENCK, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Cyrus Leland, late first lieutenant and regimental quartermaster 13th Kansas volunteer infantry, praying for relief from liability in consequence of loss of papers in battle, beg leave to report:

The memorialist states that, in consequence of the loss of important papers in battle, he is unable to make settlement of his accounts, and asks for legislation to relieve him of liability to the government. From the records of the Quartermaster General's office and the office of the Second Auditor of the Treasury Department it does not appear that the memorialist has made proper efforts to settle his accounts in the usual way. The committee, therefore, report adversely to granting the relief asked for in the memorial, and request that they be discharged from the further consideration of the subject, and that the petitioner have leave to withdraw his memorial and the papers on file therewith.

MILITARY POSTS ON THE NORTHERN OVERLAND MAIL ROUTE.

APRIL 6, 1866.—Laid on the table and ordered to be printed.

Mr. SCHENCK, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of the legislature of the State of Minnesota for the establishment of military posts on the overland mail route from St. Cloud, Minnesota, to Fort Walla-Walla, Oregon, beg leave respectfully to report :

The memorial asks for the establishment of military posts at Fort Abercrombie, Devil's lake, at a point between Devil's lake and the Missouri river, and at such other places as may be deemed necessary for the protection of emigrants passing over the northern overland mail route. The committee, with a view to obtaining exact information, transmitted the memorial, with a letter of inquiry, to the Secretary of War, by whom it was referred to Lieutenant General Grant, who made the following indorsement thereon :

“HEADQUARTERS ARMY UNITED STATES,

“February 8, 1866.

“Respectfully returned to the honorable Secretary of War. I deem it impracticable to grant the prayer of this memorial at present. I enclose a report on the subject from Major General W. T. Sherman, in which I fully concur.

“U. S. GRANT,

“Lieutenant General.”

The report of General Sherman is as follows :

“ST. LOUIS, January 23, 1866.

“COLONEL: I am this minute in receipt of the letter of Hon. Robert C. Schenck, chairman of the House Committee on Military Affairs, of January 17, indorsed by you, covering a memorial to Congress by the State of Minnesota for the establishment of a line of military posts to Walla-Walla, Oregon.

“I do not think it calls for action on the part of Congress, nor do I think we can order anything definite until Congress determines the military establishment and the Lieutenant General apportions to me my quota. I then propose to indicate a route of travel from the neighborhood of Fort Pierce, on the Missouri river; but it is judged both impracticable and unnecessary to guard the whole road by costly military posts, but rather to confine travel to one road, and require emigrants to go in bodies sufficient for self-protection. There will be no real danger in travelling from Minnesota to Fort Pierce, but thence to Virginia City some protection will be necessary. Were we to grant one-half the requirements of the Territories, the national Congress would have to in-

crease the army far beyond any present estimate, and the cost would be beyond all estimate. The people on our frontiers must conform to the national interests, instead of forcing us to cover them in their wandering propensities.

"I am, with great respect,

"W. T. SHERMAN,
"Major General, Commanding.

"Colonel T. S. BOWEN,

"Ass't Adj't Gen. Headquarters of the Army, Washington, D. C."

The committee, regarding the whole matter as lying within the exclusive jurisdiction and discretion of the military authority, and not considering any act of legislation on the subject expedient or necessary, ask to be discharged from the further consideration thereof, and that the memorial be laid on the table.

JOHN J. WALSH.

APRIL 5, 1866.—Ordered to be printed.

Mr. SCHENCK, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of John J. Walsh, praying for the adoption of a gun-carriage and shell of his invention, have had the subject under consideration, and report :

That, in the absence of any accompanying papers, or other evidence on the subject, the committee have sought information of the proper bureaus of the War and Navy departments, and learn that the memorialist has made no effort to bring his inventions to the attention of the proper officers of these departments in the usual manner. They are therefore of opinion that no legislation is required in this case, and recommend that the memorial be laid upon the table, and that the committee be discharged from its further consideration.

JOHN J. WALSH

REPORT

The Committee on Military Affairs to which was referred the memorial of John J. Walsh, praying for the adoption of a gun carriage and table of the invention, have had the subject under consideration, and report:

That in the absence of any accompanying papers or other evidence on the subject the committee have sought information of the proper bureaus of the War and Navy departments, and learn that the inventor has made no effort to bring his inventions to the attention of the proper officers of these departments in the usual manner. They are therefore of opinion that no legislation is warranted in this case, and recommend that the memorial be laid upon the table and that the committee be discharged from its further consideration.

J. E. MARTIN, DECEASED.

[To accompany bill H. R. No. 200.]

APRIL 10, 1866.—Ordered to be printed.

MR. CULLOM, from the Committee on Foreign Affairs, made the following

R E P O R T.

The Committee on Foreign Affairs, to whom was referred House bill No. 200, entitled "A bill for the relief of the legal representatives of J. E. Martin, deceased," have had the same under consideration, and now report as follows :

Your committee are not able to find any evidence showing that J. E. Martin ever acted as chargé d'affaires of the United States at Lisbon by authority of the United States government. They are informed by the Secretary of State that upon the withdrawal of J. B. Clay, chargé d'affaires of the United States at Lisbon, on the 19th day of July, 1850, the archives and property of the legation were committed, by the direction of the Department of State of the United States, to the care and keeping of J. E. Martin, then acting as consul at the port of Lisbon; and that said archives and other property remained in his custody up to the arrival of Mr. Clay's successor, Mr. Haddock, June 15, 1851. Your committee are also informed by the State Department that Mr. Martin corresponded with the Department of State as though he believed himself to be authorized to act as chargé d'affaires, but they are unable to find any evidence that he really was so authorized.

Your committee therefore recommend that the bill do not pass.

IMMIGRATION.

[To accompany bill H. R. No. 481.]

APRIL 11, 1866.—Ordered to be printed.

Mr. E. B. WASHBURNE, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred House bill No. 481, entitled "A bill to amend an act entitled 'An act to encourage immigration,' approved July 4, 1864, and an act entitled 'An act to regulate the carriage of passengers in steamships and other vessels,' approved March 3, 1855, and for other purposes," submit the following letters from the State Department as a report:

DEPARTMENT OF STATE,

Washington, March 24, 1866.

SIR: I have to acknowledge the receipt of your letter of the 21st instant, transmitting, on behalf of the House Committee on Commerce, bill No. 409, relative to the encouragement of immigration, &c., for my consideration and an expression of my views upon the same.

In reply, I have the honor to state that I have examined this bill, and approve entirely of the policy of its important provisions. The details seem to be judicious and proper, and I think they will prove effective. I hope the bill will receive the early consideration of Congress.

I transmit, for your information, a statement from the Commissioner of Immigration of the reasons which have prompted the recommendation of this bill to Congress.

I have the honor to be, sir, your obedient servant,

WILLIAM H. SEWARD.

Hon. ELLIHU B. WASHBURNE,

Chairman of the House Committee on Commerce.

DEPARTMENT OF STATE, BUREAU OF IMMIGRATION,

Washington, March 27, 1866.

SIR: Upon assuming the duties of head of this bureau I found sundry amendments to the act creating it, prepared by my predecessor after mature deliberation, and recommended in his report, just ready for submission to your committee.

I have felt and still feel a strong indisposition to add anything to these recommendations, or to interfere in any way with the progress of the bill. My attention, however, has been called to an act of the legislature of Connecticut, passed June 9, 1865, (chapter 8,) a copy of which I enclose, and for which I have no hesitation in asking the favorable consideration of your committee.

The act of July 4, 1864, creating this bureau, contains in the second section a recognition by Congress of the importance of promoting immigration by enabling the emigrant to *pledge* his labor as the means of obtaining an advance to pay the expenses of his passage. The same reasons require the extension of the same policy to pledges of the immigrant's labor for the expenses of his *interior* transit, and also the legalizing contracts of this kind made by persons under the disability of minority. The most valuable portion of immigrants is that between seventeen and twenty-one years of age, many of whom leave parents behind them too aged to be reconciled to the hardships of a voyage by the advantages of a new country, or to add anything considerable to our industrial power.

The Connecticut act also provides for a difficulty in securing the *specific performance* of contracts for labor, by charging one who seduces the laborer from his employment under his pledge with the unpaid portion of the advances made to him.

It was not, however, my design to explain or defend the act, but simply to recommend it to consideration. There is one feature, indeed, which I am not at present altogether prepared to indorse. I would not, upon any necessity now apparent, legalize a contract for the living separate of husband and wife.

The committee may conceive that the act on which I am observing was passed in the interest of individuals or companies making advances to immigrants. This consideration may properly operate to secure a close scanning of its provisions. Such individuals and companies, however, in the pursuit of their private interest, are subserving a public one, and relieving the emigrant from what, without their interposition, would be an insuperable obstacle to his taking the first step towards improving his condition. We have evidence in this bureau that there are hosts of desirable laborers in Europe anxiously soliciting the opportunity of making contracts for the pledge of their labor, the present difficulty in which is the insecurity to employers, which this act seeks to obviate.

I have the honor to be, sir, your obedient servant,

E. PESHINE SMITH.

Hon. ELLIHU B. WASHBURNE,

Ch'n Committee on Commerce, House of Reps.

DEPARTMENT OF STATE, BUREAU OF IMMIGRATION,
Washington, March 22, 1866.

SIR: A bill "to amend 'An act to encourage immigration,' approved July 4, 1864, and the act entitled 'An act to regulate the carriage of passengers in steamships and other vessels,' approved March 3, 1855, and for other purposes," having been introduced into the House of Representatives on the 19th instant, and the same having been referred to your committee, I proceed to state the reasons which have prompted the Bureau of Immigration to recommend the passage of that bill.

SECTION I.

Section 1. The object of the first section of that bill, placing restrictions on the visiting of passenger vessels in the port of New York, is to enable the superintendent at New York to assure the immigrants of the protection of the government, and to caution them against the devices of the sharpers. Immigrants are often found by the officers of this bureau to have been swindled out of their means by the most ingenious devices.

SECTION II.

Section 2. The object of the second section, providing for a summary proceeding against persons illegally restraining immigrants on board of a ship, is to furnish the superintendent of immigration, through his officers, (appointed under section 13 of the present amendment,) a summary means by which to bring offenders of this description before the law. Similar trespasses have occurred, and could not be investigated on account of the immediate departure of the wronged.

SECTION III.

Section 3 speaks for itself. It is to prevent immoralities for which section 2 of the act to regulate the carriage of passengers, &c., approved March 3, 1855, still leaves room.

SECTION IV.

Section 4 gives the Commissioner of Immigration—

1st. The power to sue for penalties incurred.

Every passenger vessel which has arrived at New York since the establishment of the United States emigrant office, without exception, has been found to have violated more or less the passenger acts, (1855 and 1860.) Other outrages are brought to the superintendent's notice, but he is unable to see them punished, as the parties injured are usually obliged to leave the city. Besides, the power to sue for penalties, forfeitures, &c., seems to be vested in no one by the passenger act of 1855, which omission carries with it its natural consequences.

2d. To unite in one action all causes of proceeding against any one ship or vessel.

It would be extremely embarrassing, and perhaps too severe, to mulct owners or masters in the costs of numerous suits in cases where by one single act the rights of all the passengers in a vessel have been infringed.

3d. Upon the commencement of an action, to cause the testimony of witnesses to be taken before any commissioner of the United States.

This will enable the superintendent to perpetuate the testimony of the witnesses in an action who may be obliged to leave the city, (a very common circumstance;) and without such power, all attempts at conducting a suit successfully would prove futile.

4th. Before or after suit brought to compound any such penalties.

This will frequently obviate tedious suits, and enable the superintendent, with the concurrence of the complainants, to obtain for them a fair remuneration for any inconveniences subjected to during the voyage. (See sections 2, 6, and 14 of the act of 1855.)

SECTION V.

Section 5 makes penalties a lien on the delinquent ship, and authorizes the vessel to be libelled therefor. (See section 15 of the act to regulate the carriage of passengers in steamships and other vessels, approved March 3, 1855.)

SECTION VI.

Section 6 requires all penalties, &c., to be paid over to the superintendents, and by them to be accounted for to the Commissioner.

The Commissioner of Immigration seems to be the most proper person to receive penalties forfeited to immigrants. He is the first person applied to by immigrants, and in many cases he will have to sue for the recovery of such penalties, forfeitures, &c.; besides, it is advisable that all matters wherein immigrants are interested should be concentrated in his hands.

SECTION VII.

Section 7 provides that sections 14 and 17 of the passenger law of 1855 be amended, so as to read Commissioner of Immigration where the words "Secretary of the Treasury" are mentioned.

1st. As to section 14 of that law the Commissioner, from his superior opportunities and experience, would be in all cases better able to judge how to apply the moneys received for deaths during the voyage of any ship than is the Secretary of the Treasury.

2d. The necessity of amending section 17 is palpable enough, as the jurisdiction therein conferred on the Secretary of the Treasury was given to him in absence of any branch of the government specifically charged with the care over passengers. Besides, the ready consent of the Treasury Department has been obtained for this and all other changes affecting that department created by this bill.

SECTION VIII.

Section 8 makes the functions of a commissioner of the United States part of the duties of the superintendent in matters relating to immigration.

This is for the simplification of proceedings in which immigrants are interested, as, among others, the taking of testimony in proceedings under section 2 of the present act.

SECTION IX.

Section 9 makes it penal in masters and captains to bring criminals to the United States.

This is to prevent the sending of pardoned criminals to this country, a danger founded in facts evidenced by the records of this department. An exemplary penalty is inserted in this section, to prevent collusion between the captains or masters and criminals.

SECTION X.

Section 10 provides for a disinfectant free from the danger of fire.

Up to the present time it has been the practice of many masters to fumigate their ships by tar, (a very dangerous substance to have on board under any circumstances,) and the case of the ship William Nelson, which was burned at sea on the 26th day of June, 1865, in consequence of this mode of disinfection, incurring the loss of four hundred and twenty-six souls, under the most agonizing circumstances, will give a sufficient reason for the provisions of this section (See section 7 of the passenger act of 1855.)

SECTION XI.

Section 11 provides for an additional clerk for the superintendent of immigration at New York, which provision is rendered necessary by the increase of his business in consequence of the present act.

SECTION XII.

Section 12 provides for the survey of passenger ships by the naval surveyors of the several ports, and the issue of a license on their report by the Commissioner of Immigration, authorizing the number of passengers to be carried by each vessel, and makes the clearance of each ship conditional to the exhibition of such license.

The over-crowding of passenger vessels is at present the most fruitful source of abuses against immigrants. Besides, the act of Congress approved May 6, 1864, entitled "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," to say the least, leaves room to much uncertainty as to the provisions of the 1st section of the passenger act, approved March 3, 1855. The importance of this simple section is clearly demonstrated by daily complaints coming to the knowledge of this bureau, but it would occupy too much space to enlarge on the reasons which have prompted its recommendation; they will present themselves to the committee with sufficient force.

SECTION XIII.

Section 13 provides for the establishment of immigrant offices at the ports of Boston, New Orleans, San Francisco, Baltimore, and Philadelphia, and the appointment of a superintendent for each port, except for Baltimore and Philadelphia, which two ports are to have but one superintendent. Each office is to have attached to it one or two officers, who shall examine passenger ships and report whether the requirements of the passenger acts have been complied with.

1st. The importance of the port of Boston, as a landing place of immigrants, will be seen from the number of immigrants arriving there every year. (See report of the Commissioner.)

2d. The direct lines of steamships lately established between New Orleans and Europe, and the facilities which the Mississippi river offers for cheap transportation to the west, will render that port one of the most important in the United States for immigrants; it is the most convenient landing place for immigrants desiring to settle in the adjoining States, having a very extensive railroad communication to nearly all parts of the south. Besides, there are about 6,228,000 acres of public land unoccupied in the State of Louisiana.

3d. Baltimore, a central harbor on the Atlantic coast, has now a direct line of steamships to Europe, and presents to the immigrant superior advantages for travel to the west, south, and the border States, as will be seen from the tables attached to the report of the Commissioner. The arrivals of immigrants in past years at that port have been considerable; and to those who recognize in the abolishment of slavery a cause of future prosperity of the south, and the necessity for introducing into the southern States a loyal element, the expediency of the offices recommended for the ports of New Orleans and Baltimore for the protection of immigrants and the encouragement of immigration must be specially apparent.

4th. Philadelphia is also an important port, and, from its proximity to Baltimore, offers the inducement of combining the office at that city and that of Baltimore under one superintendent.

5th. San Francisco has had 31,697 immigrants arriving at its port since 1860, of which number 29,555 were Chinese. The wrongs perpetrated on this class of immigrants, notwithstanding the provisions of Congress of 1862, are proverbial, and they ought to be protected by the government. There are about 100,000,000 acres of unoccupied public land in California. An office of the government at San Francisco would no doubt tend greatly to the encouragement of immigration to the Pacific region.

6th. For the enforcement of the provisions of the passenger acts, and to simplify the proceedings under them, the appointment of "inspectors of passenger vessels" would be very useful, if not necessary, and it will give the Bureau of Immigration a better control over that branch of its duties. (See section 9 of the passenger act of 1855.)

SECTION XIV.

Section 14 provides for the appointment of additional clerks in the office of the Commissioner of Immigration, which will become necessary with the increase of his duties.

SECTION XV.

Section 15 appropriates the sum of \$100,000 to carry the provisions of the act to encourage immigration and the amendments thereof into effect.

I enclose a copy of the bill, with several slight amendments to it which are rendered necessary from its construction.

I also add a new section, which vests in the Commissioner the power to sue for the recovery of damages, and the specific recovery of valuable things that may have been obtained from immigrants without a full and adequate consideration.

This is deemed to be a very important provision, and one that will cover many complaints coming to this bureau, and for which there is no provision now existing.

I have the honor to be, sir, very respectfully,

E. PESHINE SMITH,
Commissioner.

Hon. ELLIHU B. WASHBURNE,
Chairman of the House Committee on Commerce.

REPORT

The Commission on Public and Private Pensions, created by Public Law 85-804, 91st Congress, 2d Session, July 1969, has the honor to submit to the President and the Congress its report on the progress of its work during the past year. The Commission was organized on October 1, 1969, and has since that time been actively engaged in its study of the public and private pension systems in the United States. The Commission's work has been carried out in a number of ways. It has held numerous public hearings, and has received many suggestions and criticisms from interested parties. It has also conducted extensive research into the various pension systems, and has held many meetings and conferences with representatives of the various pension systems. The Commission's work has been carried out in a number of ways. It has held numerous public hearings, and has received many suggestions and criticisms from interested parties. It has also conducted extensive research into the various pension systems, and has held many meetings and conferences with representatives of the various pension systems. The Commission's work has been carried out in a number of ways. It has held numerous public hearings, and has received many suggestions and criticisms from interested parties. It has also conducted extensive research into the various pension systems, and has held many meetings and conferences with representatives of the various pension systems.

LANDS TO WEST VIRGINIA.

[To accompany bill H. R. No. 144.]

APRIL 20, 1866.—Ordered to be printed.

Mr. G. F. MILLER, from the Committee on Roads and Canals, made the following

REPORT.

The Committee on Roads and Canals, to whom were referred House bill No. 144, entitled "A bill granting lands to the State of West Virginia to aid in the construction of certain railroads," beg leave to report :

That they have given the several sections of the bill due consideration. The roads for which the lands are asked in aid of construction are thus described: "A railroad from Pennsylvania line, in Preston or an adjoining county, West Virginia, to the Ohio river, at some point in Cabell or Wayne county, West Virginia, under charter of the West Virginia Central Railroad Company; and also of a railroad from the Pennsylvania line, in Monongalia county, West Virginia, on or near the Monongalia river, to the location of the Virginia Central railroad, at or near Lewisburg, Greenbrier county, West Virginia, under charter of the Monongalia and Lewisburg Railroad Company." The bill provides that, upon the receipt of the Secretary of the Interior of the certificate of the governor of the State of West Virginia of the location and length of said railroad, or either of them, it shall be the duty of said Secretary to issue to the State of West Virginia, for the purpose described in said act, land scrip to the amount of one hundred and twenty sections to every twenty miles for each of said roads, or either of them, the proceeds of which shall be exclusively applied in the construction of that road for and on account of which such scrip shall issue, which, when sold, may be located by the assignees of said State on any unappropriated lands of the United States subject to private entry at one dollar and twenty-five cents per acre. The only compensation to the United States provided by said bill is, that said roads shall be and remain public highways for the use of the United States, and shall, at all times, carry any property or troops thereof free from all toll or other charges; and further, that the United States shall have the power to fix by law the price for which the mail shall be transported over said roads. The committee have not been informed of the probable length of the contemplated railroads, but, from the purport of the bill, it is evident that the length of each is considerable, and would absorb a large quantity of the government lands to meet the requirements of the bill. It must be borne in mind that no part of the contemplated roads pass through the public domain, and the rule has been uniform for Congress to only donate lands to aid in the construction of railroads, alternate sections of public lands, upon the supposition that the improvements would increase the remaining sections in value at least equal to the whole of the land along the route prior to the construction of such railroad. There is no doubt but that the proposed railroads, if constructed, would add much to the wealth and prosperity of the State of West Virginia,

and, in some measure, increase the public revenue by the development of the resources of the State, which seems to abound with lumber, iron ore, and coal, saying nothing about the coal-oil. Professor Rogers, State geologist, in his report to the legislature, speaks in glowing terms of the vast coal-fields in Western Virginia. Yet, while it would give the committee great pleasure to foster the improvements in different sections of this country to develop its resources, they do not deem it proper or expedient to give their support to this bill in granting a large quantity of the government lands to a corporation.

The committee thereupon recommend to the House the adoption of the following resolution:

Resolved, That the committee be discharged from the further consideration of House bill No. 144, entitled "A bill granting lands to the State of West Virginia to aid in the construction of certain railroads."

All of which is respectfully submitted.

JOSEPH C. G. KENNEDY.

APRIL 23, 1866.—Ordered to be printed.

Mr. LAFLIN, from the Committee on Printing, made the following

REPORT.

The Committee on Printing to whom was referred the memorial of Joseph C. G. Kennedy, claiming that the Secretary of the Interior did, in June, 1865, discontinue the Census Office in violation of law, and claiming that the Commissioner of the General Land Office did, in violation of the resolutions of the Senate and the House of Representatives, in the publication of the 3d volume of the Eighth Census, on manufactures, erase the name of the memorialist, as compiler, and suppress the printed preface prepared by said memorialist, &c., as will appear by reference to the memorial herewith presented, beg leave to report:

That they find that on the 23d of May, 1850, Congress passed an act establishing the Census Office, which act placed the control of said office in the hands of the Secretary of the Interior, in the words following, to wit, vol. 9, Statutes at Large, page 432: "And to enable him (Secretary of the Interior) the better to discharge these duties, he is hereby authorized and required to appoint a suitable and competent person as superintending clerk, who shall, under his direction, have the general management of matters appertaining thereto, with the privilege of franking and receiving free of charge all official documents and letters connected therewith; and the said Secretary shall also appoint such clerks and other officers as may be necessary from time to time for the efficient management of said service."

Under the power thus granted the memorialist, J. C. G. Kennedy, was appointed superintending clerk of the census on June 1, 1860, and served in that capacity till June 7, 1865, when, upon the order of the honorable Secretary of the Interior, he transferred to honorable J. M. Edmunds all the public property in his hands, and his connexion with the office ceased.

It appears that owing to the failure of the appropriations in the last Congress the Secretary of the Interior was deprived of the necessary funds to continue the operations of the census department as then constituted. Finding in the Land Office funds unappropriated, in virtue of the power vested in him "for the more efficient management of the service," he transferred the duties that had heretofore devolved upon the late superintending clerk of the census. Waiving the question whether the letter of Hon. James Harlan, Secretary of the Interior, under date June 2, 1865, constituted a commission to Hon. J. M. Edmunds, your committee find full authority for the transfer made in that part of the act, May 23, 1850, before quoted, which says:

"And the said Secretary shall also appoint such clerks and other officers as may be necessary from time to time for the efficient management of said service."

Was the appointment of such clerks and other officers necessary in the sense above contemplated?

It appears, further, that on June 2, 1865, the Hon. Secretary of the Interior addressed a letter to the Commissioner of the Land Office, authorizing said Commissioner, under his direction, to discharge the duties which devolve upon the superintending clerk of the census, which fact is shown by a copy of a letter of Hon. James Harlan, dated Washington, June 2, 1865, herewith presented, marked A.

The first question presented to your committee was, did the Secretary of the Interior, by the removal of your memorialist and the transfer of his duties to the Hon. J. M. Edmunds, Commissioner of the General Land Office, violate the law? By referring to the act of Congress May 23, 1850, we find that the whole control of the census department, including the appointment of superintending clerk of census, was, by that act, placed under the direction of the Secretary. We are unable to discover why and how the Secretary could have violated the law when acting in accordance with the statute before quoted. Under his direction, the Commissioner of the Land Office was appointed to perform the duties of the Census Office to the Land Office, that thus he might avail himself of the funds not called for by that bureau. Before this action was taken, it appears that the Hon. Secretary of the Interior had presented the case to the President and his cabinet, and the recommendations upon which he afterwards acted were approved by that high authority.

So far it would appear that not only did the Secretary of the Interior act in strict conformity with the law and under the sanction of the highest officers of the government, but that there does not appear the least warrant for the charge made by your memorialist that the Secretary of the Interior had acted "in violation of law."

In connexion therewith it is due to your memorialist to call your attention to some of the grounds upon which he claims authority for the accusation. He referred your committee to the following resolutions, viz: House resolutions, February 9, 1863; Senate resolutions, February 23, 1863, to the effect "That there be printed, under the direction of the Superintendent of the Census, and bound, for the use of the members of the House, ten thousand copies of the several parts of the Eighth Census, as the same may be supplied to the Superintendent of Public Printing," &c.

Both resolutions, with the exception as to numbers and designation of the two branches of Congress, embodied the same language. Your memorialist claims that under these resolutions the power to print was denied to the Secretary of the Interior in virtue of the general management of the Census department, and was transferred to your memorialist, making him, in this particular at least, totally independent of the head of that department. Your committee most respectfully submit that even under this interpretation of these resolutions, to which interpretation they do not subscribe, your memorialist had no right to complain of the manner in which the printing of the report of the Superintendent of the Census was done, as it has been made to appear that this right was vested only in the officer occupying that position when the several parts of the Eighth Census were supplied to the Superintendent of Public Printing.

This brings your committee directly to the question, in what condition were "the several parts of the Eighth Census" when your memorialist ceased to perform the duties of Superintendent of the Census?

It was satisfactorily shown to your committee that the preliminary volume on population and that on agriculture had been printed, and that on manufactures was printed to the extent of about 400 pages, and the compilations that now appear in said volume, to and including page 673, had been prepared, and that the materials for the volume on Mortality, Education, Crime, &c., were in process of preparation or completion. It is then apparent that *at the time of transfer of duties on the part of your memorialist*, the volume on Manufactures had not been supplied to the Superintendent of Public Printing.

Here your committee are prepared to consider the second part of the grievance of which your memorialist complains, to wit: That his name had been erased from the title page of volume 3, manufactures, as compiler, and that a preface which he had prepared had been removed, and that written by the Hon. J. M. Edmunds had been substituted therefor; while it does appear that the name of J. C. G. Kennedy was placed upon the title page of the first two volumes of the Eighth Census, in words following, to wit:

“Under the direction of the Secretary of the Interior: By Joseph C. G. Kennedy, Superintendent of Census.”

The title page of the third volume, on manufactures, appeared without either his name or that of any other person, in words following, to wit:

“Compiled from the original returns of the Eighth Census, under the direction of the Secretary of the Interior.”

Inasmuch, then, as at the time of the completion for the press of the volume on manufactures your memorialist *was* no longer the Superintendent of the Census, *he* had *no* reason to complain of the omission of his name as compiler, especially so since it is evident that his successor, neither by name nor title, appeared to supply this omission.

While your memorialist does not allege that the Hon. J. M. Edmunds preferred claims to the authorship of the volume on manufactures by affixing his name on the title page, he does allege that he did him a great injustice by presenting such claim in appending to the preface to the same his name as “Commissioner of the General Land Office, and in charge of the census,” particularly so in the exclusion of a preface which your memorialist had previously prepared.

It appears that the preface last named was not brought to the notice of the Commissioner “in charge of the census” at the time of the transfer of the public property from the office of the late Superintendent of Census, although it is alleged, and with truth, your committee believe, that said preface was left with the other public property. Your committee have examined the prefaces referred to, and, without passing upon the character of either as to merit, they feel bound to say that they do not recognize in the work and labor done by an employé of the government, however exalted his position, any claim of copyright, or its equivalent, on the part of the person performing such labor.

While your committee are not unmindful of the high character given to the census reports of the United States, while under the able management of your memorialist, they respectfully submit that there is nothing, either in the preface affixed to the volume on manufactures, or in the signature of the Hon. J. M. Edmunds, as “in charge of the census,” to injure or detract from the high fame which his services had gained for him, not only in this but in foreign countries, inasmuch as this preface in no way reflects upon your memorialist, or claims for its author any credit for the work.

Independent, however, of this view, we cannot forget the fact, which we trust we have made apparent, that in no sense was your memorialist acting in an official capacity at the time of the publication of this volume, and neither can we forget the fact that at the time the Hon. J. M. Edmunds, “under the direction” of the Secretary of the Interior, as provided by law, was acting as, and performing the duties of, superintending clerk of the census.

In virtue of the power thus granted, he had the undoubted right to introduce such a preface as, in his judgment, he should think most befitting the work, subject only to the direction of his superior officer, the Secretary of the Interior.

Your committee, having thus examined the questions referred to them in the memorial, have come to the conclusion—

1. That the charge of “violation of law” on the part of the Secretary of the Interior is entirely unwarranted and without foundation.

2. That no illegal act has been committed by the Hon. J. M. Edmunds,

touching the rights of your memorialist, for which said memorialist should seek redress at your hands.

Inasmuch as the prayer of your memorialist has sought to bring into discredit the action of the Hon. Secretary of the Interior, your committee are forced by this examination to thank the Hon. Secretary for the efficient manner in which he acted in making the transfer in question, thereby most successfully aiding in the completion of a work of high statistical value, which, for the interests of the country and the world at large, had been altogether too long delayed:

In obedience to the above conclusions, your committee report the following resolution, and recommend its passage:

Resolved, That the Committee on Printing be discharged from the further consideration of the memorial of J. C. G. Kennedy, under date December 12, 1865.

A.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 2, 1865.

SIR: I herewith enclose, for your information, a copy of a letter of this date to Jos. C. G. Kennedy, esq., the superintending clerk of the census.

You will receive from that gentleman all official documents and letters connected with the census, and all public property of every description now in his hands. You will give to him duplicate receipts therefor.

As you have consented, in addition to your present duties, to discharge those which devolve upon the superintending clerk of the census, you are hereby authorized to do so under my direction, and you will enter upon them on the 6th instant. A sufficient number of clerks will be detailed from your office to enable you to prosecute the work with all practicable despatch.

I cannot impress upon you too earnestly my conviction of the vital importance of the completion at an early period of the remaining volumes. The tardy publication of statistical returns renders them of but limited value for any immediate practical purpose, although they may furnish to the student of history an authentic and faithful record of the condition, population, and resources of the country at a given period.

I am, sir, very respectfully, your obedient servant,

JAS. HARLAN, *Secretary*.

Hon. JAMES M. EDMUNDS,

Commissioner of the General Land Office.

WASHINGTON, December 12, 1865.

To the House of Representatives of the United States:

The memorial of the undersigned respectfully represents, that in 1849-'50 he actively participated in the preparation of the law now in force providing for the taking of the seventh census and subsequent censuses, and the schedules and instructions necessary for their execution; and for five years prior to the month of June last he rendered continuous service as Superintendent of Census, in which capacity he performed faithfully, and he believes satisfactorily and usefully to the country, every duty incumbent upon him in connexion with this work, and in addition thereto has contributed a vast amount of information to the different departments, generals in the field, and the executives of the several

States, called for by the peculiar condition of the country. Without advice, assistance, or interference from any quarter, he superintended the taking of the Seventh and Eighth Censuses, both executed so satisfactorily to the country that no serious doubt or complaint has ever been expressed in any State, city, or county, regarding the accuracy of the work, or the integrity which prevailed in its administration or in the representation of the results, while every Secretary who has presided over the department during these enumerations has testified to his fidelity, as have all the members of the Census Board under whom he has served in the preparation of the law, schedules, and instructions.

The system of regulating the accounts of the marshals was arranged by your petitioner, and never was an appeal from his decision sustained by the Secretary of the Interior. Under these circumstances, Hon. James Harlan, present Secretary of the Interior, in the month of June last addressed your petitioner a note, (of which a copy, with accompanying correspondence, is appended,) in violation of law discontinuing the Census Office, the duties of which were subsequently transferred to the Commissioner of the General Land Office, James M. Edmunds, who, upon being advised of the fact, informed your petitioner that he, said Edmunds, was altogether ignorant of the manner of performing the duties thus imposed, and requested a continuance of your petitioner's services to insure the proper prosecution of the work, which services were faithfully rendered for near the space of two months without compensation. When your petitioner withdrew from the census, there had been published, first, the preliminary report, embracing proximate details of all the more important facts developed by the census; second, the volume on population; third, the volume on agriculture; all which works proved acceptable to our people, and have been highly complimented in foreign countries. The volume on manufactures was more than half printed, the labor on all its details more than ninety-nine-hundredths done, and its entire plan fully matured, the best evidence of which exists in the fact that there does not appear in the body of the volume as published one line of text, one column of figures, one expression, one form in manner, or one idea of matter, the result of any act, direction, or suggestion on the part of him the said Edmunds. A title page and introduction, of which a copy will be found herewith accompanying, had been prepared early in April, and had been corrected in proof by your petitioner.

Now, that of which your petitioner especially complains, and from which he prays redress, as well on the public account as his own, is the act of said Edmunds directing and causing the Superintendent of Public Printing, in violation of the resolutions of the Senate and House of Representatives, to erase the name of your petitioner as compiler, and suppress the printed preface prepared by your petitioner for the volume compiled under the direction of your petitioner exclusively, and to insert in lieu thereof certain inappropriate "preliminary views," to which is affixed the name of said Edmunds, thereby not only obliterating and excluding what had been prepared legally by your petitioner under the predecessor of the present Secretary, and by him approved, in violation of every principle of honor, justice, and propriety, but surreptitiously assuming to himself to have superintended the work by a clandestine suppression of all evidence of your petitioner's official association therewith, in defiance of the resolution of the Senate, 23d February, 1863, and of that of the House on the 9th of the same month. This petitioner prays your honorable bodies to take some suitable action expressive of your views of such an unwarrantable breach of privilege so subversive of official courtesy and honor.

JOS. C. G. KENNEDY.

MODIFICATION OF THE OATH OF OFFICE.

Mr. JAMES F. WILSON, from the Committee on the Judiciary, made the following

REPORT.

APRIL 23, 1866.—Laid on the table and ordered to be printed.

By direction of the House, the Committee on the Judiciary has considered the "Message from the President of the United States, transmitting communications from the Secretary of the Treasury and Postmaster General, suggesting a modification of the oath of office prescribed by act of Congress approved July 2, 1862," and submit the following report thereon :

The act of July 2, 1862, provides, "That hereafter every person elected or appointed to any office of honor or profit under the government of the United States, either in the civil, military, or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation :

"I, A. B., do solemnly swear, (or affirm,) that I have never voluntarily borne arms against the United States since I have been a citizen thereof ; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto ; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States ; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic ; that I will bear true faith and allegiance to the same ; that I take this obligation freely, without any mental reservation or purpose of evasion ; and that I will well and faithfully discharge the duties of the office on which I am about to enter : So help me God."

The act prescribing this oath of office was passed when the nation was in the midst of a gigantic war, waged against it by its own citizens, and Congress intended to establish by it a permanent rule of public policy, which should exclude from the offices of the United States every citizen who had voluntarily abandoned his allegiance to the government, and joined in the mad attempt of traitors to destroy it. The official positions which many of the leading traitors held under the government while engaged in organizing the rebellion, were sources of power without which the war could not have been commenced. Those positions gave the conspirators a resistless influence over the people of the southern States, and supplied the means for organizing forces that converted one-half of the republic into battle-fields, on which loyalty and treason contended for four years. If every officer of the government had proved true to his

trust the rebellion could not have occurred. This fact was properly appreciated by Congress and by President Lincoln when the act of July 2, 1862, was placed upon the statute book of the nation. They saw that treason derived all its original strength from the official positions of the leading traitors. The baseness of the traitors who had gone from Congress, from the cabinet, from the army and navy, to give character and organization and power to the rebellion, was fresh in the minds of all who participated in the enactment of the oath of office. The Yulee letter, disclosing the double villany of the men who conspired against the government while holding its highest offices, had been discovered and placed before the country but a short time before the passage of the act of July 2, 1862. That letter did much toward convincing every true supporter of the government of the necessity of applying the test of uninterrupted loyalty to every public officer. So marked was its effect then that the committee deem it proper to reproduce it here as an argument in favor of maintaining the policy in the adoption of which it materially aided. The letter is as follows :

“WASHINGTON, January 7, 1861.

“MY DEAR SIR: On the other side is a copy of resolutions adopted at a consultation of senators from the seceding States, in which Georgia, Alabama, Louisiana, Arkansas, Texas, Mississippi and Florida were present.

“The idea of the meeting was that the States should go out at once, and provide for the early organization of a confederate government, not later than the 15th of February. This time is allowed to enable Louisiana and Texas to participate. It seemed to be the opinion that if we left here, force, loan, and volunteer bills might be passed, which would put Mr. Lincoln in immediate condition for hostilities ; whereas, by remaining in our places until the 4th of March, it is thought we can keep the hands of Mr. Buchanan tied, and disable the republicans from effecting any legislation which will strengthen the hands of the incoming administration.

“The resolutions will be sent by the delegation to the president of the convention. I have not been able to find Mr. Mallory this morning. Hawkins is in Connecticut. I have, therefore, thought it best to send you this copy of the resolutions.

“In haste, yours truly,

“D. L. YULEE.

“JOSEPH FINEGAN, Esq.,

“*Sovereignty Convention, Tallahassee, Fla.*”

The resolutions referred to were the following :

“*Resolved*, 1. That, in our opinion, each of the southern States should as soon as may be secede from the Union.

“*Resolved*, 2. That provision should be made for a convention to organize a confederacy of the seceding States, the convention to meet not later than the 15th of February, at the city of Montgomery, in the State of Alabama.

“*Resolved*, 3. That, in view of the hostile legislation that is threatened against the seceding States, and which may be consummated before the 4th of March, we ask instructions, whether the delegations are to remain in Congress until that date for the purpose of defeating such legislation.

“*Resolved*, 4. That a committee be, and are hereby, appointed, consisting of Messrs. Davis, Slidell, and Mallory, to carry out the object of this meeting.”

The conspirators who attended the meeting referred to, and who passed these resolutions, all had resting upon their consciences an official oath requiring them to support the Constitution of the United States. They were all senators of the United States. In public they professed to respect that oath, and to desire the perpetual unity of the republic.

In secret they disregarded the one and plotted for the destruction of the other. No one but a madman should think of trusting these men again with official power in this nation; and yet their perfidy, dark and damning as it was, did not exceed that of the great body of public men who controlled the political power of the insurrectionary States while the forces of war were concentrating, and who, in most of those States, possess it to-day.

Congress and the country were convinced that upon the consciences of such men the ordinary oath of office would have but little effect, and that the safety of the nation required their exclusion from office altogether. The test oath of 1862 was one of the results of this conviction. The teachings of more than four years of war, with its expenditures of blood and treasure, its black horrors and revolting barbarisms, have not shaken this conviction. The treachery of 1861 may be repeated if those who participated in it should again be intrusted with power. Conspirators might profit by the experience of the past, and make future treason more successful than that which, overwhelmed with disaster, now lies at our feet. Failure often begets wisdom. It is not uncommon for disaster to give birth to success. Give to the enemies of this republic another opportunity to wield the official power which they possessed in the past, and success in some form may come to and abide with them.

The committee understand that it is the deliberate purpose of Congress to maintain the policy of the act of July 2, 1862, which is to keep the offices of the government in the hands of loyal men. Treason is not to be made respectable by the robes of office. Places of honor, trust, power, and profit, should be bestowed on the loyal only. True men can be found in the insurrectionary States to fill all such places, and none other should be selected. No law of the nation ought to be so changed as to render any other course possible. And in this regard the committee entirely concur in the bold utterances made by President Johnson, both while the war was in progress and after actual hostilities had ceased. When he, as military governor of Tennessee, was about calling a convention to reorganize civil government in that State, and asked, "But, in calling a convention to restore the State, who shall restore and re-establish it? Shall the man who gave his influence and means to destroy the government? Is he to participate in the great work of reorganization? Shall he who brought this misery upon the State be permitted to control its destinies?" he knew, as did every loyal man, that there was but one proper course to pursue, and he marked that out in bold, brave utterances in answer to his own questions, when he immediately followed them with these words:

"If this be so, then all this precious blood of our brave soldiers and officers so freely poured out will have been wantonly spilled. All the glorious victories by our noble armies will go for nought, and all the battle-fields which have been sown with dead heroes during this rebellion will have been made memorable in vain. Why all this carnage and devastation? It was that treason might be put down and traitors punished. Therefore I say that traitors should take a back seat in the work of reconstruction. If there be but five thousand men in Tennessee loyal to the Constitution, loyal to freedom, loyal to justice, these true and faithful men should control the work of reorganization and reformation absolutely."

These declarations of the President are in entire harmony with the policy established by the act of July 2, 1862; and when on the 20th of April, 1865, he asserted that, "It is time the American people should be taught to understand that treason is a crime, not in revenge, not in anger, but that treason is a crime, and should be esteemed as such and punished as such," he uttered an appeal for the continuance of the "test oath" of such force that the committee cannot disregard it, and is constrained to aid him in all proper efforts to reach so desirable a result. And the committee is of opinion that one of the most effective means of making treason odious is to close all official doors against traitors;

fill the offices of the government with loyal men; put no traitors on guard. This, in the judgment of the committee, will surely make treason odious, and tend to produce harmony of action between the legislative and executive branches of the government.

The committee does not suppose that the President when he declared "if there are but five thousand men in Tennessee loyal to the Constitution, loyal to freedom, loyal to justice, these true and faithful men should control the work of reorganization and reformation absolutely," meant to be understood as fixing a numerical limitation, but rather as announcing the doctrine that loyal men, however few in numbers, should be the sole depositories of political power and official influence. This must be the true interpretation of his words; for any other would be inconsistent with his emphatic and often repeated denunciations of treason and traitors.

On March 2, 1861, he said in the Senate, "Show me who has been engaged in these conspiracies, who has fired upon our flag, who has given instructions to take our forts, and custom-houses, and arsenals, and dock yards, and I will show you a traitor. Were I President of the United States, I would do as Thomas Jefferson did in 1806 with Aaron Burr. I would have them arrested, and, if convicted within the meaning of the Constitution, by the Eternal God I would execute them."

While military governor of Tennessee, he said: "These leaders must feel the power of the government. Treason must be made odious, and traitors must be impoverished. Their great plantations must be seized and divided into small farms, and sold to honest, industrious men."

Again, on April 21, 1865, he reaffirmed these sentiments by saying, "Treason must be made odious, traitors must be made odious and impoverished. They must not only be punished, but their social power must be destroyed. And after making treason odious, every Union man and the government should be reimbursed out of the pockets of those who have inflicted this great suffering upon the country."

These quotations from the emphatic utterances of the President show that the committee is not mistaken in its interpretation of his declaration that, "if there are but five thousand men in Tennessee loyal to the Constitution, loyal to freedom, loyal to justice, these true and faithful men should control the work of reorganization and reformation absolutely." He did mean by this language to declare, as a principle of government, that to loyal men alone should power be intrusted. And this principle is of general application, and so he seems to have regarded it; for both as military governor of Tennessee and as President of the United States he has affirmed it.

The act of July 2, 1862, applies this principle to all officers under the government of the United States. It shuts out the disloyal from office. It makes treason odious by teaching the people that no traitor is worthy to hold any position of public trust under the government. The principle of that act is just, its policy wise, and its observance is demanded by the highest interests of the nation.

But a modification of the oath of office established by that act is recommended by the President, the Secretary of the Treasury, and the Postmaster General, in the document referred to the committee as a subject-matter of inquiry. If this recommendation is to be followed, it should be based on some very urgent reason. No temporary inconvenience will answer as a justification for a departure from the sound policy in regard to which the President and Congress so perfectly harmonized. The committee will endeavor, by a careful examination of the message and accompanying documents, to ascertain upon what support the proposed modification of the oath of office rests.

The Secretary of the Treasury, in speaking of the condition of the country after the surrender of the rebel armies, says:

"The country was in a peculiar condition. The rebellion had come to a sudden close. All resistance to the authority of the United States had ceased, and some seven millions of people, in a state of utter disorganization, were left without any civil government whatever, and without even an adequate military protection against anarchy and violence. Under these circumstances, as it seemed clearly to be the duty of the Executive to proceed at once to establish the federal authority and civil government in these States, so it seemed to be necessary to carry into effect the revenue laws of the general government. As the country was passing from a state of war to a state of peace, and the emergency seemed to be too pressing to admit of delay until the meeting of Congress, it was thought that the test oath might, in view of the great objects to be attained, in some cases be dispensed with; or rather, that persons might be permitted to hold revenue offices who could take it only in a qualified form."

This is a sorrowful picture indeed. Seven millions of people, in a state of utter demoralization, "left without any civil government whatever, and without even an adequate military protection against anarchy and violence," presented questions of gravest moment for the consideration of the government. And it seems strange that this appalling condition of things did not suggest to the President the propriety of calling Congress together that he might have the aid of the legislative department of the government in reducing disorganization, anarchy, and violence, to order, safety, and peace.

The interest of the country seemed to demand, the Secretary informs the house, that civil government should at once be established. "The emergency seemed to be too pressing to admit of delay until the meeting of Congress." But Congress could have been called together at once; Congress could have been convened before the date of the proclamation through which the President undertook to organize a provisional government for North Carolina.

Why was it not done? It was not because the President believed that he alone possessed the power to provide governments for the insurgent States; for he expressly negatived this idea by the terms of the following despatch, sent through the Secretary of State to the provisional governor of Mississippi:

"WASHINGTON, July 24, 1865.

"W. L. SHARKEY,

"*Provisional Governor of Mississippi, Jackson:*

"Your telegram of the 21st have been received. The President sees no reason to interfere with General Slocum's proceedings. The government of the State will be provisional only until the civil authorities shall be restored, *with the approval of Congress*. Meanwhile military authority cannot be withdrawn.

"WILLIAM H. SEWARD."

Here the power of Congress over the whole subject of reconstruction is expressly stated.

And at a much latter day the President reasserted this power of Congress in more emphatic terms in a despatch to the provisional governor of Florida, as follows:

"DEPARTMENT OF STATE,

"*Washington, September 12, 1865.*

"SIR: Your excellency's letter of the 29th ultimo, with the accompanying proclamation, has been received and submitted to the President. The steps to which it refers, towards reorganizing the government of Florida, seem to be in the main judicious, and good results from them may be hoped for. The presumption to which the proclamation refers, however, in favor of insurgents who may wish to vote, and who may have applied for, but not received, their pardons, is not entirely approved. All applications for pardons will be duly considered, and will be disposed of as soon as may be practicable. *It must, however, be distinctly understood that the restoration to which your proclamation refers will be subject to the decision of Congress.*

"I have the honor to be, your excellency's obedient servant,

"WILLIAM H. SEWARD.

"His Excellency WILLIAM MARVIN,

"*Provisional Governor of the State of Florida, Tallahassee.*"

It is not, then, because the President believed that the Constitution clothed him with full power to restore civil governments to the insurgent States that he failed to convene Congress in extra session. Nor was it because he considered no legislation necessary to enable him to properly administer the laws of the United States; for the Secretary of the Treasury, with the approval of the President, says that it was important to execute the revenue laws in the southern States, and as the emergency was pressing, "it was thought that the test oath might, in view of the great objects to be attained, in some cases be *dispensed* with."

But the test oath was established by law, and no officer had any more right to dispense with it than he had to dispense with any other law. The Constitution says the President "shall take care that the laws be faithfully executed," and neither he nor any other officer of the government has the right to dispense with any law. All officers should know that the dispensing power does not exist in this government, and that its exercise is dangerous and will not be tolerated.

It is the duty of public officers to obey and execute the laws. No obligation is plainer than this, and none should be more rigidly observed. The legislative department of the government is intrusted with the law-making power, and when the power is once exercised all officers must yield obedience to it. If the act of July 2, 1862, stood in the way of a proper execution of other laws to the extent indicated by the Secretary of the Treasury the duty of the President was very plain. It was not to dispense with the law, but to assemble Congress and ask for a removal of the obstacle. Had this been done in the spring of 1865 the complications now existing in the affairs of the nation would, in all probability, have been avoided; for with the views then entertained by the President relative to the power of Congress over the subject of reconstruction, the legislative and executive departments could have worked together with little or no friction.

Instead of calling Congress together, the executive department of the government elected to dispense with the law of July 2, 1862, and the Secretary of the Treasury presents the House with the following exhibit of officers appointed under this dispensation:

List of assessors and collectors in the southern States who have not taken the oath of office without qualification.

James H. Norwood, assessor first district South Carolina.
 Charles J. Elford, assessor third district South Carolina.
 Alexander M. McDowell, assessor first district Alabama.
 William H. Vasser, assessor third district Mississippi.
 Benjamin F. McDonough, assessor first district Texas.
 Montgomery Moses, collector first district South Carolina.
 James G. Gibbes, collector third district South Carolina.
 Robert B. Kingsbury, collector second district Texas.
 John B. Black, Andrew G. Boskin, Bolivar J. Hayes, Godfrey Leaphart, Richard C. Griffin, William W. Adams, George Allen, John H. Marshall, (no oath,) John S. Hair, Richard W. Gaillard, Robert Hawthorne, Thomas M. Graham, William Butler, James J. Shumate, Homer L. McGowan, Thomas S. Crayton, William E. Walters, W. E. Holcomb, B. F. Morgan, James E. Haygood, William Goldsmith, Henry M. Smith, Joseph M. Elford, John C. P. Jeber, H. F. Adicks, Walter B. Mitts, assistant assessors third district South Carolina.
 Ishmael S. Harwell, Sampson S. Lanier, Lemuel A. Collier, Elias M. Kiels, Charles W. Braswell, John W. Leslie, Thomas E. Randolph, Charles R. Warren, Joseph Silver, Lewis J. Laird, Edward Ward, assistant assessors first district of Alabama.
 Thomas W. King, George N. Forbes, assistant assessors second district Georgia.

There are undoubtedly others (assistant assessors) whose oaths have not yet been received.

E. A. ROLLINS.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, March 19, 1866.

SIR: In compliance with your request to furnish you with the names of such customs officers as have taken the oath prescribed by the act of July 2, 1862, in a modified form, I have the honor to state that the following are the only persons falling within that category, to wit:

James M. Mathews, collector, Rappahannock, Virginia.
William S. Croft, collector, Georgetown, South Carolina.
Gordon Forbes, surveyor, Yeocomico, Virginia.
William Leitch, surveyor, Charleston, South Carolina.
F. M. Robertson, special examiner of drugs, Charleston, South Carolina.
Edgar M. Lazarus, appraiser, Charleston, South Carolina.
J. F. Walter, appraiser, Charleston, South Carolina.

I have the honor to be your obedient servant,

N. SARGENT, *Commissioner*.

Hon. H. McCULLOCH, *Secretary of the Treasury*.

It is not a matter of surprise that Montgomery Moses, who is reported in the foregoing list as "collector first district, South Carolina," cannot subscribe to the oath of office, for the committee is informed that he was a confederate tax collector. The following letter relative to the case of Mr. Moses, was recently received at the Treasury Department, and is not regarded by the committee as disclosing a state of facts calling for a modification of the oath of office. The letter is in these words:

"SUMPTER, S. C., April 10, 1866.

"DEAR SIR: For four years of the war Montgomery Moses was collector of war tax for Jeff. Davis, grinding the people here, and now is assessor (collector) of United States internal revenue; and all his sons were rebels, and now are sucking government pap in revenue. Is this right? Plenty Union men here idle.

"Your servant,

"PETER HAYNES, *Freedman*."

This letter, though brief and written by an humble man, contains much on which those who advise a modification of the oath of office may seriously, and perhaps profitably, reflect. Each one of the officers embraced in the foregoing list is acting in violation of law. Their commissions represent fifty-four transgressions of a national statute. Each act of appointment was an assumption of a grave responsibility. Why were these things done? An answer to this question will present some interesting facts.

In a communication sent to the Senate, in response to a resolution of that body, the Secretary of the Treasury said:

"In most of the southern States nearly every man of the character and intelligence necessary to qualify him for a position as a revenue officer, some time during the progress of the war, either engaged in hostilities against the government of the United States, or held (willingly or unwillingly) office under rebel authority. Hence it has been necessary, as before stated, to employ in a few important but not very remunerative positions, in most of the subordinate ones, men of this class, especially as the salary and emoluments of the offices were generally too small to induce northern men to accept them."

These considerations, coupled with the necessity of a speedy execution of the revenue laws in the rebel States, are presented in extenuation of the course pursued relative to the appointments in those States. But the committee is inclined to believe that the Secretary misjudged the facts of the case, and thus magnified the difficulties which beset him; and is of opinion that loyal men who could qualify under the provisions of the act of July 2, 1862, might have been found in numbers more than sufficient to fill all the offices in the rebel States if proper exertions had been made to that end. It must be remembered that the rebel States furnished many thousands of white troops to the Union army. The following table exhibits the number of white troops supplied to the federal army by the people of the States not represented in Congress:

Virginia	85
North Carolina	3, 675
Georgia	142
Alabama	2, 471
Florida	1, 286
Mississippi	681
Louisiana	5, 357
Texas	2, 444
Arkansas	8, 627
Tennessee	17, 637
Total	<u>42, 605</u>

In addition to this number about 10,000 white troops from those States were enlisted in organizations not embraced in the foregoing table, making a total of 52,605 white loyalists who stood by the government. And even this statement does not include several thousands whose actual presence swelled the ranks of the army of the republic, and whose real number cannot be known without a labored investigation of the records of the War Department, as the committee was informed by the officer in charge of those records.

It will be remembered that in 1865 Congress passed the following joint resolution :

“ A RESOLUTION to encourage the employment of disabled and discharged soldiers.

“ *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, should be preferred for appointments to civil offices, provided they shall be found to possess the business capacity necessary for the proper discharge of the duties of such offices.

“ SEC. 2. *And be it further resolved*, That, in grateful recognition of the services, sacrifices, and sufferings of persons honorably discharged from the military and naval service of the country by reason of wounds, disease, or expiration of terms of enlistment, it is respectfully recommended to bankers, merchants, manufacturers, mechanics, farmers, and persons engaged in industrial pursuits, to give them the preference for appointments to remunerative situations and employments.

“ Approved, March 3, 1865.”

It seems to the committee that an effort to carry out this congressional policy would have discovered among the many thousands of men in the southern States who enlisted in the army to maintain the authority of the government a number sufficient to fill all the federal offices in those States. The President has recently called the attention of the heads of the several departments to the propriety of carrying out this congressional policy, and the committee believe that an earnest effort to do so will reward many of the soldiers of the republic in the southern States with official positions under the government in whose cause they fought. The men are there and are willing to accept the offices without a modification of the oath prescribed by law.

On this point the following statement, furnished to a leading paper of this city by a number of loyal Alabamians since the reference of the President's special message to the committee, is full of suggestive interest :

“ Over three thousand men enlisted in the Union army from the mountain counties in north Alabama. They fought bravely during the war, and were part of General Sherman's escort on his march from the mountains to the sea. In south Alabama, near the Florida line, two regiments were also made up for the national army, viz: the 1st and 2d Florida cavalry. These men, who came into the federal lines at the risk of their lives, had fathers, brothers, and relatives as strong Unionists as themselves. General G. E. Spencer, who commanded a part of these troops, and the Union men from Alabama, now in this city, will be happy to furnish to the Treasury and Post Office Department the names of hundreds of respectable, reliable, and intelligent Unionists in that State who are able to take the test oath of office without mutilation or mental reservation.”

Thousands of others were loyal who did not enter the Union army. A friend of this class has also made his appeal in the public press since this subject was referred to the committee. He says :

"I have the honor to state, in the name of the loyal men of Virginia, many of whom have suffered imprisonment, exile, and impoverishment in consequence of their loyalty to the government of the United States, that there were a sufficient number of competent and loyal men incarcerated in Richmond and Salisbury, North Carolina, (for no cause but that of devotion to the United States government,) to fill all federal appointments, that can take the present test oath without modification. So much for Virginia; and there is no question that in every southern State there are enough true and loyal men capable to fill the offices if they had the least encouragement to apply for them.

"If the test oath is modified the loyal element in the south will be forever destroyed. In behalf of justice, right, mercy, and the loyalists of the south, I humbly pray the Congress of the United States government not to modify the oath."

Some of these persons are applicants for the very offices filled by men who cannot qualify as required by law. Mr. J. J. Giers, a citizen of Alabama, applied for an appointment as commissioner for the collection of direct taxes for that State. His application was supported by the following testimonials :

"Hon. SECRETARY OF WAR: Please see Mr. J. J. Giers on the propriety of furnishing small arm ammunition to the loyal people of northern Alabama.

"A. LINCOLN.

"NOVEMBER 13, 1863."

"NASHVILLE, TENNESSEE, *September 30, 1864.*

"Mr. Giers is a gentleman of integrity and respectability; he is one of the few in that country who stood firm to the Union. Any kindness you may show him will confer a personal favor upon me,

"ANDREW JOHNSON.

"To PRESIDENT LINCOLN."

"Mr. Giers is a loyal citizen of Alabama, and has done many acts to prove his position.

"G. H. THOMAS,

"Major General.

"MAY 14, 1865."

"I know Mr. Giers well, and I always found him ready to aid the government in every way possible. He is competent and reliable.

"U. S. GRANT,

"Lieutenant General.

"FEBRUARY 18, 1866."

Mr. Giers's friends were not successful in their efforts to secure for him the position he desired, but one F. W. Sykes, who was a member of the rebel legislature of Alabama was nominated to the office. Other cases might be given, but it is deemed unnecessary. Applications are still pending for the appointment of some of the loyal men of the south to official positions in those States.

On this point the Secretary of the Treasury remarks as follows :

"It is true that there are still some applicants for office in the southern States who present what they call a 'clean record for loyalty,' but, with rare exceptions, they are persons who would have been able to present an equally fair record for place under the confederate government if the rebellion had been a success, or persons lacking the qualifications which are needed in revenue positions."

The persons here referred to are, doubtless, those who refused to aid the rebellion, and could not aid the government of the United States during the war, because of the merciless rebel despotism which restrained them; and all the credit which they receive for their faithfulness to the republic is what seems not unlike a sneer on the part of the Secretary, at "their clean record for loyalty." "A clean record for loyalty" deserves a higher reward than this, and those who can present it are entitled to quite as much consideration at the hands of the government as those men of "character and intelligence" who are holding offices in violation of law. Numbers of the latter class were not unkindly received, but, on the contrary, were treated with great kindness and forbearance. When they could not take the oath of office it was "varied by more or less being stricken out or omitted, according to the feelings or circumstances of the appointee." That loyal men have not been appointed to office in the rebel

States does not arise from the fact that no such men are there, but from other and very different causes. One of these causes is presented in the communication of the Postmaster General accompanying the message referred to the committee.

In speaking of the difficulty he has experienced in securing the services of persons who can take the test oath to act as postmasters, he says :

"This, as I am inclined to believe, has not been owing exclusively to there not being loyal persons who could take the oath, but to the limited compensation in most of the offices, offering insufficient inducements to persons to act as postmasters, and also to the unwillingness of many who might otherwise act to do so in consequence of the compromise of their social position, which they fear would result from taking the oath, where the great majority of their neighbors consist of those who had in some form aided the rebellion."

The difficulty arising from the limited compensation in most of the post offices of the rebel States would have no application in regard to revenue officers, for they command pecuniary inducements sufficient to cause men to seek after them. And it may well be said in answer to the suggestion of the Postmaster General that ex-rebels cannot afford to discharge the duties of an office at a less rate of compensation than loyal men can. Hence a modification of the test oath would not lift the Postmaster General out of this difficulty. The real trouble lies in the second reason assigned by the Postmaster General, which is "the unwillingness of many who might otherwise act to do so, in consequence of the compromise of their social position, which they fear would result from taking the oath, where the great majority of their neighbors consist of those who have in some form aided the rebellion."

Instead of this being an argument in favor of a modification of the test oath, its force appears to the committee to lie in the opposite direction. A modification based on such a consideration would operate as a premium for disloyalty. It would add to the social power of the disloyal, and this result would stand in opposition to the policy of the President as announced by him in April, 1865, when he said of the rebels, "their social power must be destroyed."

If the test oath should be so far modified as to enable an ex-rebel to take it, the social influence which now overawes loyal men would still push them out of the way and force the government to bestow its offices on the disloyal. This would not make "treason odious," nor would it "punish traitors."

On the contrary, it would increase the odium which now attaches to loyalty in the southern States, and punish men because of their faithfulness to the government. A community that will not respect an officer of the United States because he has been sufficiently loyal to the government to allow of his taking the test oath, does not deserve to have the advantages and conveniences of the postal services extended to it, but does deserve to have the revenue laws enforced against it by such officers as the government may be able to receive the services of.

There are thousands of loyal men in the southern States who can take the test oath, and to such should the offices in those States be given. Let the government recognize their claims in this regard, and loyalty and respect for the laws of the United States will soon be strong enough to overcome the social power which now frowns upon every Union man who stood by the flag of the republic throughout the whole course of the war.

Temporary inconveniences should not turn the government aside from this policy. The unhappy condition of the southern States cannot be improved by changing laws which may be opposed to the views and feelings of those citizens who fought for four years to destroy the government. They must learn that obedience to law is a duty not to be lightly regarded; and that loyalty to the government is a virtue which cannot be destroyed by the social power of the disloyal. When these ends are secured, it may be expedient to modify the test oath, but not until then.

The committee therefore ask to be discharged from the further consideration of the subject.

VIEWS OF THE MINORITY.

Andrew J. Rogers, from the Committee on the Judiciary, to whom was referred by the direction of the house the message from his excellency the President of the United States, transmitting communications from the honorable Secretary of the Treasury and the honorable Postmaster General, recommending a modification of the test oath prescribed by act of Congress of July 2, 1862, presents to the house a minority report in favor of a modification of said oath; as recommended by the President and said Secretaries, and submits the following reasons :

The honorable Secretaries and the President are in a situation to know better the necessities for a modification of such oath than any other persons. Their honesty, loyalty, and love of country cannot be justly questioned, and where such high authority recommends the passage or modification of a law, it should have great weight, and furnishes to the house good evidence that the oath should be modified. It is but a small asking, simply to urge the modification of an oath unknown to the Constitution, and established in time of war for the purposes of war, and I am a little surprised that they did not recommend its entire repeal. The war is ended, and peace has been proclaimed.

The only question that ought to be raised is, are they loyal men, and if they can take the oath to support the Constitution. That is all that ought, or really can be required of them. The most of the people of the south cast their fortunes with the rebellion, upon an honest conviction that their allegiance to State sovereignty was superior to their allegiance to federal authority. Some held offices under the rebel government as the only means they had for support. Some aided the rebellion to avoid conscription. Some were compelled by conscription to take up arms in defence of the so-called Confederate States. Yet the present oath prevents every one of them from holding an office under the federal government. In fact, nearly one-half of the people were compelled, by the force of a despotism, to sustain the confederate cause; and as the federal government could not protect them, it has no right to complain of persons who were forced to give allegiance to the only organization that could give them protection. The honorable Secretary of the Treasury says that not one of those who now hold office in the south, were movers in disunion, or unfriendly to the government at the commencement of war. He says that a very slight change in the oath, a change that would not cover a particle of present disloyalty, would enable the most of them to hold the offices they are now so acceptably filling. He also says :

“For those offices that must soon become vacant, if Congress should not deem it safe or proper to modify the oath, I am at a loss to know where the right men are to be obtained, or how the revenues in many of the southern districts are to be collected.

“I deem it my duty further to remark, that I do not consider it advisable for the government to attempt to collect taxes in the southern States by the hands of strangers. After having given the subject careful consideration, anxious as I am to increase the revenue and to lighten by distributing and equalizing the burdens of the people, with no party interest to promote, and with nothing but the good of the government at heart, I have come to the deliberate conclusion that it would be better for the country, politically and financially, to suspend the collection of internal revenue taxes in the southern States, except in commercial cities, for months, if not for years to come, rather than to undertake to collect them by men not identified with the tax-payers in sympathy or in interest.

“The rebellion grew out of an antagonism of opinion between the people of the free and slave States, the legitimate result of a difference of institutions. With the abolition of slavery, all real differences of opinion and all serious causes of estrangement ought rapidly to disappear. It will be a calamity, the extent of which cannot now be estimated, both to this nation and to the cause of civil liberty throughout the world, if, instead of looking towards

reconciliation and harmony, the action of the government shall tend to harden and intensify a sectionalism between the northern and southern States. It is difficult to conceive of a more unfortunate course for the government of the United States to pursue than to make tax-gatherers at the south of men who are strangers to the people. It needs no reference to history (although it is full of lessons upon this subject) to illustrate the fatal consequences of such a policy."

This is the language of a faithful, true, and devoted patriot, and who is not under the influence of party passion, radicalism, or fanaticism, and whose love for his country has been fully tested and never found wanting—one who has been the guardian of our finances, and acquired a reputation for honor, purity, and statesmanship unequalled by any of the age in which we live. Let us bury passion, hate, and revenge in the deep ocean of oblivion, and rise to the true standard of our country, forgiving our southern brethren their past offences, as we would that they, in like circumstances, should forgive us. The Secretary of the Treasury says :

"It is true that there are still some applicants for office in the southern States who present what they call 'a clean record for loyalty,' but, with rare exceptions, they are persons who would have been able to present an equally fair record for place under the confederate government if the rebellion had been a success, or persons lacking the qualifications which are needed in revenue positions.

"In regard to the matter of compensation, I have only to remark that the law fixes definitely the salaries and commissions of most officers, and that the pay of subordinate officers is altogether inadequate to tempt northern men to assume the risk and incur the odium of collecting taxes in the southern States, except, perhaps, in the commercial cities of the seaboard."

In speaking of a clear record for loyalty the honorable Secretary does not mean to speak sneeringly of those who have really a clear record, as the majority report would seem to imply, but he has a reference to those who were not liable to draft and who were never placed in a situation to test their loyalty to the United States, or so-called Confederate States. The honorable Postmaster General says :

"As a remedy for the future, I would venture to suggest a modification of the oath by inserting the word 'voluntarily' immediately preceding the word 'sought,' so that the clause would read, 'That I have neither *voluntarily* sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States.' This would enlarge the class of persons who could qualify as postmasters and mail-contractors, and be in harmony, as it seems to me, with the general provisions and purposes of the oath, and thus facilitate the speedy re-establishment of the postal service to the common benefit of all sections of the country; for it must be borne in mind that while the people of the southern States are more directly interested in the restoration of this service, the citizens of all the other States are also largely interested.

"It may not be uninteresting to you to know that of the 2,258 mail-routes in operation in the disloyal States at the breaking out of the rebellion the service of 757 only has been restored; and that of 8,902 post offices in those States only 2,042 appointments of postmasters have been made, of whom 1,177 only have qualified for office, 757 of them being males, and 420 females. Of the 865 who have not qualified it is believed that quite all of them have not done so because of the oath."

I called upon the honorable Secretary of the Treasury to be informed by him what modification of the test oath would be satisfactory to him, and was informed by him that the amending of the third clause in the oath by striking out the words "neither sought, nor accepted, nor attempted to exercise the functions of," and inserting the words, "not voluntarily sought," so that it would read, "that I have not voluntarily sought any office whatever, under any authority, or pretended authority, in hostility to the United States," would answer the purpose for which the modification was recommended. I do not deem it material that all the doings of the President in time of war should be vindicated in order to sustain his views in time of peace.

We must deal with things as they now are and not pursue the same course to fallen foes that we would pursue towards them were they in arms against the government.

This test oath must, at some time, and that is not far distant, be repealed. It cannot remain always, unless it is the determination of the people to deprive

the present generation in the south from a voice in the affairs of the nation. That cannot be and this country remain a republic. The people of the south are ready and anxious to participate in the affairs of the government, and defend and support the Constitution of their country. The worst despotisms of the Old World have been established through the forms of test oaths; and to exclude seven millions of people from participating in federal affairs by the taking of an oath unknown to the Constitution, a condition precedent and one which they cannot take without false swearing, is despotism pure and simple. The Constitution provides in article six that executive and judicial officers of the United States shall be bound by oath to support it. That is the only oath that can be legally required of the persons who are to execute the offices of the Treasury and Post Office Departments, for they are clearly executive officers of the United States, within the meaning of the Constitution.

Justice Story, in his Commentaries on the Constitution, speaking of the House of Representatives, section 624, says:

"It would but seem fair reasoning, upon the plainest principles of interpretation, that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others. From the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others."

Mr. Madison, in the *Federalist*, commenting on the same subject, says:

"The qualifications of the elected being less carefully and properly defined by the State constitutions, and being at the same time more susceptible of uniformity, have been very properly considered and regulated by the convention. A representative of the United States must be of the age of twenty-five years; must have been seven years a citizen of the United States; must, at the time of the election, be an inhabitant of the State he is to represent, and during the time of his service must be in no office under the United States. Under these reasonable limitations the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession or religious faith."—*Federalist*, No. 52.

The first act of the first Congress was to prescribe the oath of office, and which was as follows:

"That the oath or affirmation required by the sixth article of the Constitution of the United States shall be administered in the following form, to wit: I, A. B., do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States."

If Congress has power to add to the oath in the Constitution, it has power to diminish it and set it aside. If it can add the conditions it now does, it can add any number more. The constitutional oath to be administered has relation to the future only and not to the past, and if the officer would swear to support the Constitution, that was all that could be required of him.

Our Constitution was made soon after the close of the war, and our fathers did not deem it wise to provide test oaths in order to prohibit those who gave aid and comfort to Great Britain from holding office under the federal government.

At the time of the formation of the Constitution many of the followers of King George resided here and continued here until their deaths, any of whom could have held any office in the gift of the people, even that of President, by simply taking the oath provided for in the Constitution. Ought we not to be as charitable to our southern brethren as were our fathers to those in this country who adhered to the government of Great Britain all through the revolutionary war?

Every just consideration demands that we so shape our legislation as to restore kindly and friendly relations between the two sections of country.

The masses of the people in the south had no hand in originating the rebellion, and it was simply the result of the action of certain leading secessionists of the south and certain radicals and fanatics in the north. It is, therefore, uncharitable, anti-Christian, and unfair to visit punishment upon a whole people because of the sins of a few. Leading men and leading journals of the radical school in the north invited the south to secede. I will only quote from one leading journal of the north. The New York Tribune of February 23, 1861, says:

"Whenever it shall be clear that the great body of the southern people have become conclusively alienated from the Union, and anxious to escape it, we will do our best to forward their views."

Again, in the same paper of date March 2, 1861, we have this clear statement on the same point:

"We have repeatedly said, and we once more insist, that the great principle embodied by Jefferson in the Declaration of Independence, that governments derive their just powers from the consent of the governed, is sound and just; and that if the slave States, the cotton States, or the Gulf States only, choose to form an independent nation they have a moral right to do so."

But while we were in the midst of the war, Mr. Greeley, in the Tribune of the 21st of February, 1863, said:

"I was willing in the winter of 1860-'61 to let the cotton States go, if they really desired it. I was not only then willing that the Union should, in good faith, make them the offer, but I now deeply regret that it was not made and acted on."

The people of the south had at least encouragement from the north to secede, and had a right to believe that the principal papers of the republican party enunciated its sentiments.

This test oath ought to be repealed at least as to all who have received pardon, for the legal effect of a pardon is to restore them to all the rights they enjoyed before the commission of the offence, the same as if no offence had ever been committed, and as most of them have been pardoned the repeal or modification of the oath to them would not make it difficult to procure suitable persons in the south to execute the business of the Treasury and Post Office Departments to be executed there.

Chief Justice Marshal, in the case of the United States *vs.* Wilson, 7 Peters, 162, speaking on this subject of pardons in England, says:

"As the power has been exercised from time immemorial by the executive of that nation, whose language is our language, and whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it."

In 7 Bacon's Abridgement, page 416, it is said:

"It was formerly doubted whether a pardon could do more than take away the punishment, leaving the crime and its disabling consequences unremoved. But it is now settled that a pardon, whether by the King or by act of Parliament, removes not only the punishment, but all the legal disabilities consequent on the crime."

The doctrine is thus stated in 1 Bishop on Criminal Law, 713:

"The effect of a full pardon is to absolve the party from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether imprisonment, pecuniary penalty, or whatever else the law provided."

Also, in 5 Bacon's Abridgement, it is laid down:

"It seems agreed that a pardon of treason or felony, even after an attainder, so far clears the party from the infamy, and all other consequences thereof, that

he may have an action against any who shall afterward call him a traitor or felon, for the pardon makes him, as it were, a new man."

Blackstone says :

"A pardon may be pleaded in bar as at once destroying the end and purpose of the indictment, by remitting the punishment which the prosecution is calculated to inflict."

Also :

"The effect of such a pardon by the king is to make the offender a new man, to acquit him of all corporal punishment and forfeitures annexed to that offence for which he obtains the pardon."

In Lilly's Abridgement the doctrine is thus laid down :

"A pardon doth discharge not only the punishment which was to have been afflicted upon the person that did commit the offence pardoned, but also the guilt of the offence itself. It pardons culpa so clearly, that, in the eyes of the law, the offender is as innocent as if he had never committed the offence."

In view of all the surrounding circumstances, it does appear that we should lay our party prejudices aside, elevate ourselves to the situation of affairs, and modify the oath, so far at least as is recommended by the honorable Secretary of the Treasury and the honorable Postmaster General and the President of the United States. It is to be hoped that our revenues will be collected and our means of communication through the Post Office Department extended over all the vast domain of our common country, without the necessity of using such measures as will tend to alienate the affections of one-third our population and establish a despotism over one-third of our land. For the reasons herein set forth, it is recommended that Congress so far modify the test oath that the third clause may be stricken out and a clause inserted therein to read as follows : "That I have not voluntarily sought any office whatever under any authority or pretended authority in hostility to the United States."

All of which is respectfully submitted.

ANDREW J. ROGERS.

JAMES BYERS AND OTHERS.

APRIL 27, 1866.—Ordered to be printed.

Mr. McKEE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of James Byers, George W. Griggs, and John Nolen, praying compensation for services rendered the United States government in escaping from Norfolk, Virginia, from the lines of the enemy, on the 8th of May, 1862, with a steam-tug, bringing her to Fortress Monroe, Virginia, with information of the movements of the enemy, and surrendering the same to the United States authorities, report adversely and ask to be discharged from the further consideration of the subject. The services were meritorious and commendable, but there is no law authorizing payment for such, and payment in this case would lay down a precedent that would involve an almost endless amount of expenditure for similar services during the late war.

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CLERKS OF COMMITTEES.

APRIL 27, 1866.—Laid on the table and ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, in accordance with resolution of the House, of the 26th of February last, relative to the employment of clerks to committees, make the following report:

That in the judgment of this committee a clerk is necessary and indispensable for the transaction of its business; that all of the customary hours of labor during the day, and frequently far into the night, are devoted by the clerk to the necessary and legitimate business of the committee; and that no member of the committee has employed him in attending to private business during business hours, for the reason that his time is fully employed in his public duties.

JOHN KAYE.

APRIL 27.—Laid on the table and ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of John Kaye, of Louisville, Kentucky, for relief from the payment of certain internal revenue tax, having had the same under consideration, respectfully report :

That the memorialist, being engaged in the manufacture of tobacco, in the months of January, February, March, and April, 1865, made his first large lot, amounting to 16,814 pounds, through the neglect, mismanagement, and unskillfulness of his employés, a total failure; so that the whole of that amount was mouldy and unsalable, and now remains on hand subject to a tax, when sold, of \$6,682 25, which is considerably more than the value of the tobacco.

The memorialist seeks relief, and prays that the tax be remitted.

The committee are of the opinion that it would not be expedient to recommend special acts of relief for cases of this nature, or to make special exemptions from the terms of general laws raising revenue, and particularly in cases arising from the misfortunes in trade, commerce, and manufactures. If any remedy is granted, it would appear to be more equitable through an amendment of the internal revenue laws themselves.

The committee therefore report back the petition of John Kaye, and ask to be discharged from the further consideration of the subject, with recommendation that it be referred to the Committee of Ways and Means.

GEORGE CHORPENNING.

[To accompany H. Res. No. 123.]

APRIL 27, 1866.—Ordered to be printed.

Mr. A. W. HUBBARD, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of George Chorpenning, submit the following report:

The committee have carefully reviewed the facts as set forth by the proofs in the case, fully concurring in the views expressed by the respective Committees on Indian Affairs of the 35th, 37th and 38th Congresses, and report that it is fully established that George Chorpenning and Absalom Woodward were contractors for carrying the United States mails from California to Salt Lake, in Utah Territory; that they were the *first* persons ever engaged in transporting the mails through that country, commencing as early as May 1, 1851, and connecting at Salt Lake with the line east, formed the *first* "overland mail line" ever established across the continent; that in the performance of these duties they were compelled to pass regularly through the Indian haunts of the country; that the mail parties, or trains, were repeatedly attacked, men killed and wounded, mules, horses, and other property stolen and destroyed by them; that in November, 1851, Absalom Woodward with his escort of four men were attacked and murdered by those Indians, and all the property in their charge destroyed. The petitioner, Chorpenning, continued to carry the mail for Woodward and Chorpenning down to the 30th of June, 1852, and on his own account since.

The proof is sufficient to establish that, from the commencement of the service down to the 30th of June, 1852, eighty-three (83) mules and horses and other property, valued at three thousand two hundred and seventy-five dollars, (\$3,275,) were killed and destroyed by the Indians, together with a large amount of money on the person of Woodward when he was killed. The proofs also establish that, from June 30, 1852, to April 1, 1856, eighty-six (86) mules and horses were killed or stolen, and property of the value of five hundred and seventy dollars (\$570) destroyed by the Indians. For this property George Chorpenning and Absalom Woodward are entitled to indemnity from the government.

It has been the policy of the government to regard the Indians within its limits, and not subjected to the legislation of any of the States, as distinct but imperfectly organized political communities, under the control and protection of the government of the United States.

The intercourse of the whites with the Indians is regulated by law, and all persons going among them in the service, or by the special license, of the United States are under its protection. If such persons are injured by the Indians they have no redress by resort to judicial tribunals, for none such exist among the Indians; and such persons are *strictly prohibited* from obtaining redress by reprisals, *but the government promises to pay their losses.*

It is unnecessary to review the series of laws passed to effect these objects. The act of 30th of June, 1834, (5th Stat. at Large,) is the last of the general series, and is now in force. By the 17th section of this act it is, among other

things, enacted that if any Indian or Indians shall, within the Indian country take or destroy the property of any person lawfully within such country, such person may make application to the superintendent, agent, or sub-agent, who, on being furnished with the necessary proof, shall, under the direction of the President, make application to the nation or tribe to which such Indian or Indians belong for satisfaction; and if such nation or tribe shall refuse satisfaction in a reasonable time, not exceeding twelve months, such superintendent shall make return of his doing to the Commissioner of Indian Affairs, that proper steps may be taken to obtain satisfaction for the injury; and, in the mean time, the United States *guarantee to the party so injured an eventual indemnification*: provided, first, if the party seeks personal satisfaction or revenge he forfeits his claim for indemnification; second, if the claim is not presented in three years it is barred. If the Indians receive an annuity, the claim is to be paid from the annuity; if the Indians *do not* receive an annuity, *it is to be paid from the treasury*. The 7th section of the Indian appropriation bill, passed the 27th of February, 1851, is as follows, viz:

“Be it remembered, that all the laws now in force regulating trade and intercourse with the Indian tribes, or such provisions of them as may be applicable, shall be, and the same are hereby, extended over the Indian tribes in the Territories of New Mexico and Utah.”

Woodward and Chorpennig were lawfully in the Indian territory. They were there by authority, and in execution of the laws of the United States, and in the actual service of the government. As such they were entitled to rely on its promises of indemnity.

They did not seek private satisfaction or revenge for injuries sustained by the Indians, but cultivated, as far as was in their power, a friendly feeling with them. They made known their losses to the superintendent and agent. Brigham Young, the superintendent, reported the death of Woodward; J. H. Holeman, the agent, in his affidavit gives an account of the murder of Woodward; says the Indians admitted their attacks on Hanson's and other mail trains because they had first been attacked by the whites, *but did not pretend that the persons in charge of the mail trains had attempted to injure them*. Says he could not attempt to state the number of mules killed, or the amount of property taken from the mail trains, but the Indians themselves admitted they had killed many. In the letter of 13th February, eighteen hundred and fifty-eight, written by the Commissioner of Indian Affairs to an attorney of the parties, the Commissioner says “that Messrs. Chorpennig and Woodward were lawfully in the Indian country where and when their property was lost is admitted. But then the tribes to which the offending Indians belonged cannot be said to have been in amity with the United States; the petition itself styles them as hostile Indians. When the intercourse act was passed, it was with reference to the Atlantic tribes, but few of whom were west of the Missouri; and treaty stipulations were necessary to place them technically upon a footing of amity, and, in addition to that, it was required that they must be on terms of actual friendship. This law, inapplicable as it is in many respects, has been extended, without amendment, over the tribes of the Pacific coast by the act of February 27, 1851, and in regard to them the same construction must be given as in the case of those for the government of which it was originally intended.

“There is nothing to show that the requirement of the law, that the proofs of the losses should be submitted to an agent to be laid before the Indians, was ever complied with. It is true that reports to this office from the governor and *ex officio* superintendent of Indian affairs for Utah and from Agent Holeman show that they were cognizant to some extent of the losses complained of, *and it is admitted that it would, under the circumstances, have been perhaps impossible to identify the tribes to which the offenders belonged, and impracticable as well as useless, had they known, to have adopted the regular and exact courses prescribed.*

or to have submitted the matter to them, but the law is imperative that it should be done."

Your committee are of opinion that only so much of the law of eighteen hundred and thirty-four as was applicable to the Territory of Utah was extended over it by the 7th section of the act of February, eighteen hundred and fifty-one. At that date the Territory of Utah was unexplored. What Indian tribes inhabited or made it a place of resort was then, and for a long time afterward, unknown to the government, and no treaties of peace and amity had yet been made. So much of the law as looked to a regular course of transactions with them as known to savage communities under the regular treaties of peace was wholly inapplicable.

The preparation of documents stating the losses and the tribes to which the assailing Indians belonged was not, in the opinion of the committee, applicable to these Indians, and was impracticable. All the sufferers could do was to report the injuries to the superintendent and agent, and claim the protection of the government. This, the committee are satisfied, has been done.

But the committee are further of opinion that so much of the law of eighteen hundred and thirty-four as prohibited the injured party from seeking private satisfaction or redress for his wrongs did apply to the Territory of Utah, and also so much as promised payment by the government did apply. The party was restrained from seeking private redress to preserve the country from an Indian war, and this restraint was the consideration of the promise of indemnity. The government, by this law, took the matter in its own hands. It restrained the injured party from seeking redress, and promised to make good his losses.

Your committee are of opinion that George Chorpennig and the widow of Absalom Woodward, deceased, are entitled to compensation for the losses sustained, and as no annuities are payable to these Indians, the parties are entitled to payment from the treasury.

The number of mules and horses lost, as stated above, is eighty-three (83) mules and horses of Woodward and Chorpennig, killed prior to July one, eighteen hundred and fifty-two, and eighty-six (86) mules and horses of George Chorpennig, killed from July one, eighteen hundred and fifty-two, to April one, eighteen hundred and fifty-six.

By the proofs in the case, as well as the corroborating statements of the honorable senators and representatives in the 35th Congress from the State of California, these animals are proved to have been worth from two hundred dollars (\$200) to five hundred dollars (\$500) each. These prices, upon first impression, may seem extravagant. But when your committee take into consideration that this was in the days of fabulously high prices for everything in California, together with the strong array of proofs upon the subject, they cannot but regard it as fair and reasonable. Besides, the route lay over the mountains and through the barren deserts between California and Salt Lake, and none but the very best stock could endure the severe hardships incident to the service. For, in addition to the length of the trip, there were changes of grass, water, and climate, which would soon break down the constitution of *any* but superior animals; and when such were obtained, they were doubtless worth to the contractors from two hundred dollars (\$200) to five hundred dollars (\$500) each.

Your committee, therefore, think it reasonable and just to take the sum of three hundred and fifty dollars, (\$350,) the difference between two hundred (\$200) and five hundred dollars, (\$500,) as the average value of each animal, and thus ascertain the eighty-three mules and horses lost by Messrs. Woodward and Chorpennig to be worth twenty-nine thousand and fifty dollars, (\$29,050.) To this must be added three thousand two hundred and seventy-five dollars (\$3,275) for other property lost. This does not include the money lost when Woodward and his party were killed.

On the eighty-six (86) mules and horses lost by George Chorpennig indi-

vidually from July one, eighteen hundred and fifty-two, to April one, eighteen hundred and fifty-six, they place the same average value of three hundred and fifty dollars, (\$350,) making this loss thirty thousand one hundred dollars, (\$30,100,) to which must be added, for the loss of other property, five hundred and seventy dollars, (\$570,) making thirty thousand six hundred and seventy dollars, (\$30,670.)

Your committee, therefore, recommend that the sum of thirty-two thousand three hundred and twenty-five dollars (\$32,325) be paid to George Chorpenning and Elizabeth Woodward, wife of Absalom Woodward, and that the further sum of thirty thousand six hundred and seventy dollars (\$30,670) be paid to George Chorpenning.

To these ends your committee report the accompanying joint resolution, and recommend its passage.

U. P. MONROE.

APRIL 27, 1866.—Laid on the table and ordered to be printed.

Mr. H. D. WASHBURN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of U. P. Monroe for relief, ask leave to make the following report:

From the papers before us it appears that in the year 1851 the Sacramento river, in California, although then a public highway, was so obstructed by snags and sand-bars as to prevent its use above Colusa; that the petitioner, then a resident of Colusa, from motives not shown by the papers, but, as your committee believe, as a matter of speculation, in the year 1852 proceeded to remove the snags and sand-bars for the distance of eighty or a hundred miles, at an expense, as alleged, of eighty thousand dollars. As to the value of said improvements or the amount expended, or whether the government has or has not made use of said river as a highway, your committee do not think enters into this case. If private individuals can, wherever navigation is impeded, remove the obstructions and call upon the government for the money so expended, it will leave for private individuals that legislation which has heretofore been so much trouble to our wisest statesmen—the manner and kind of improvements necessary for our “rivers and harbors,” and the duty of the “general government” in regard to the same. If a precedent be established by the allowance of such a claim as this, men or companies will be raised for the improvements of our rivers and harbors, make the improvements, and call upon the government to reimburse them for their outlays. Your committee think the adoption of such a precedent would be very pernicious, both in principle and practice.

ELIZABETH C. WILLETT.

[To accompany bill H. R. No. 362.]

APRIL 27, 1866.—Laid on the table and ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred House bill No. 362, for the relief of Elizabeth C. Willett, of San Francisco, California, having had the same under consideration, report :

That the said Elizabeth C. Willett is the daughter and assignee of Joshua Shaw, late of Bordentown, New Jersey, deceased, for whose benefit an act of Congress was passed, and approved 20th February, 1847, for compensation for the use, by government, of his invention of percussion caps and locks, for small-arms, and of percussion locks and wafer primers to be applied to the firing of cannon; that they have examined with care the provisions of the act aforesaid, and the evidence presented in support of the present bill. It appears by the terms of the act above cited, that the Secretary of War, the late Governor Marcy, was "authorized and directed to examine the claims of Joshua Shaw upon the government of the United States, and report to the proper officers of the treasury, for payment, *such amount as may be found due him, upon principles of justice and equity*, not exceeding twenty-five thousand dollars; which amount is hereby directed to be paid out of any moneys in the treasury not otherwise appropriated, *as a full compensation for the past and future use of his invention* of percussion caps and locks for small-arms, and percussion locks and wafer primers to be applied to the firing of cannon."

Under the provisions of this act, the Secretary of War, whose discriminating judgment will hardly be questioned, during the lifetime of Joshua Shaw, and with the aid of all the light possible to be shed on this claim, allowed the sum of eighteen thousand dollars "as a full compensation for the past and future use of his invention." The remaining sum of seven thousand dollars is now asked for his surviving daughter and assignee in apparent compliance with the maximum mentioned in the act, but in violation of what seems to the committee to have been the intention of Congress; for we hold that it was not twenty-five thousand dollars that was appropriated, but only such amount as was found due by the Secretary of War, not exceeding that sum.

It is not contended that since the award any additional evidence of the certainty of Mr. Shaw's claim, as an original invention, has been discovered; nor is it shown that any peculiar or additional advantages to the government have since been derived from its use, as there appears to be nothing recently in the ordnance service like the invention of Mr. Shaw. His was a discovery and foundation, only, for more recent and complete inventions, and for which he was paid \$18,000 "as a full compensation for its past and future use." The justice and equity of Secretary Marcy's decision remain unimpeached, and has the full confidence of this committee.

It is therefore recommended that the claim be rejected, and that the bill be laid upon the table.

BERRY AND HIGGINS.

[To accompany H. Res. No. 128.]

MAY 1, 1866.—Ordered to be printed.

Mr. J. H. RICE, from the Committee on Public Buildings and Grounds, made the following

REPORT.

The Committee on Public Buildings and Grounds, to whom was referred the petition of Messrs. Berry and Higgins, "contractors for the marble and granite, and the marble and granite work, of the north front of the United States Patent Office building," for relief, &c., having fully considered the same and the evidence adduced, respectfully submit the following report :

That one John F. Connelly, on the 21st day of April, A. D. 1857, made and executed a contract with the then Commissioner of Public Buildings, John B. Blake, esq., for and in behalf of the United States, in which the said Connelly agreed to furnish the marble and marble-work for the north front of the Patent Office building, for and in consideration of the prices and payments therein stipulated to be paid by the United States. The payments were to be made monthly as the material should be furnished and the work performed, "reserving in all cases ten per cent. as collateral security for the fulfilment of the contract in the time and manner specified ; the sum accruing from these ten per cent. reservations as collateral security to be afterwards paid to the said Connelly only when the contract shall have been fully executed and complied with." Said Connelly afterwards transferred and assigned said contract, with assent of the Secretary of the Interior, to these petitioners. It does not appear that a new contract was made for the granite and granite-work for the north front, but that there was an agreement that it should be furnished and executed by the petitioners at the same prices and on the same terms as were expressed in a contract made and executed in 1849, by the Commissioner of Public Buildings, with D. and T. Berry, one of whom is the copartner of Higgins, and comprising the firm of Berry & Higgins, your petitioners. This contract was for the granite and granite-work of the east and west wings of the Patent Office building, and contained reservation of pay as security for performance; and the north front was to be the same material and workmanship as those fronts, except that it was not intended, at the time the contracts were made in 1857, that a portico was to be erected with columns, &c., as were those fronts. The work was commenced, and continued under the contracts until 1861, when it was suspended for want of the requisite appropriations by Congress. August 22, 1864, appropriations having been made for the continuance of the work, the architect and superintendent directed Berry & Higgins to proceed immediately with the work. (See letter of T. U. Walter, esq., marked A.)

They at once protested against this, and declared their inability to proceed under the contract at the prices stipulated therein, and claiming that it would unjust to compel them to, as they might have completed the work before the

great rise in labor and transportation, &c., had occurred, if they could have proceeded with the work as was contemplated when the contracts were made; and also claiming that they were not bound to build a portico, as was then directed, such not being the requirement of the contracts, and the materials and labor being more and more expensive for such work. They had contracted with Mr. Connelly, the original contractor, before the work was suspended, to quarry and deliver the marble at the prices named in the contract; but in consequence of the quarry having become filled up with mud and water, and the railroads, switches, and machinery having become damaged, he refused to execute it. In all these representations and claims the officers having charge of the matter in behalf of the government seem to have concurred and yielded; for it was agreed that they should go on and furnish the materials and work, and that they should be paid "a fair and equitable compensation for their labor." (See Mr. Walter's letter, marked B.) From this evidence it would appear that the contracts were substantially abandoned by the parties, and a new one verbally concluded. At any rate, we cannot escape from the conviction that they were so far varied as to bind the government to pay a different and a greater price for the materials and labor afterwards to be furnished and performed than that specified therein, provided the superintendent and architect acting under the direction of the Secretary of the Interior had the power to so bind the government. Secretary Usher believed that he had such power, and exercised or assumed to exercise it in this and other cases. Upon the faith of the new contract, or the old ones as modified, the contractors reopened the quarries, clearing them of the accumulations of nearly four years, repaired and renewed the machinery and engines which had been unfit for use by exposure and decay, at an expense of nearly twelve thousand dollars. Not until February, 1865, were these difficulties overcome, so that they could again furnish marble for the building. After that time they proceeded vigorously with the work until July, 1865, when the present Secretary of the Interior notified them that they could have the option to proceed under the contracts, and at the prices therein stipulated, or abandon the work and the contracts. The present Secretary of the Interior, with that cautious and conscientious discharge of duty which so eminently characterizes all his official acts, as the committee understand, soon after his accession to office reviewed the subject of the contracts for the completion of the Capitol extension and the Patent Office building, and carefully weighed the powers conferred upon him in the premises, and arrived at the conclusion that he did not possess the power to vary or change these terms in any particular. If he had not such power, neither had his predecessor, and therefore his action in the premises was void; and herein originated the notice and option tendered by him to these contractors. It may be contended that they should have abandoned the work as they were permitted to do; and the fact that they did not do so may be claimed to prove that they would get remunerative compensation at the contract prices. The committee ask attention to the condition in which they would have been left as a sufficient answer to this. They would have lost the twelve thousand dollars for reopening the quarries, &c., as already stated, and the accumulated amount of the ten per cent. reservations, amounting at that time on the whole contract to over twelve thousand dollars more. The Secretary did not propose to pay to them the latter sum, as he certainly had no right to do under his view of his powers in the premises. The committee are of the opinion that the contractors were fully justified in continuing the work and appealing to the justice and the judgment of Congress, rather than submit to such bad terms.

The committee cannot agree with the honorable Secretary in the opinion "that the contract prices paid for the material and work at the Interior Department is relatively greater than that paid contractors at the Capitol before the allowance in rates agreed by my (his) predecessor." On the contrary, we are forced to the conclusion that the contracts made with these petitioners were

much more favorable to the government than those for like work and materials for the Capitol extension. (See statement of comparative prices, marked C.) Neither can we concur in the opinion that the expenses of procurement, transportation, and working of materials in the latter case is so much greater than the former, inasmuch as the marble for the columns under both contracts come from near the same locality in Maryland, and the cost of water transportation is much less than by rail. (See letter of the Secretary, with accompanying communications to him from Edward Clark, esq., architect, &c., and statement of Mr. Harkness, marked D.) The committee are amply satisfied that the petitioners must lose largely unless some relief shall be extended to them. In this the present architect and superintendent concurs in the following extract from his report :

“PATENT OFFICE BUILDING.

“The marble-work of the portico of the north front has been renewed, after a suspension of nearly four years. The progress has not been satisfactory. This is owing to the fact that during the suspension of the work the machinery, railways, &c., at the quarries, and hoisting apparatus at the building, have been destroyed. The quarry became filled up with water and mud. A steam apparatus had to be procured by the contractors to clean out and get it in working order.

“Four months’ time was consumed in the quarries by a respectable force of workmen before the contractors were able to get any material to the building.

“This work is being done under a contract made in the year 1857. During the suspension of this work, wages and other expenses have increased to such an extent as to render this contract unremunerative.

“In view of these facts, I consider the case of these contractors as one deserving the favorable consideration of Congress.”

(See, also, statement of comparative cost of materials and labor, marked (E.)

And believing that they are truly loyal men; that they have honestly and fairly performed their obligations to the government, so far as can reasonably and justly be required; considering all the circumstances, and that they should be treated as well as other similar contractors to whom largely increased prices have been, and are being, paid; and having full confidence that the Secretary of the Interior, in his discretion, can and will adjust the accounts with ample protection to the honor and interests of the nation, and at the same time satisfying the reasonable claims of the petitioners, we respectfully report the accompanying joint resolution, and recommend its passage.

A.

ARCHITECT’S OFFICE, UNITED STATES CAPITOL,
Washington, D. C., August 26, 1864.

GENTLEMEN: You are hereby directed to proceed immediately with the marble-work of the north front of the Patent Office building. It is the request of the Secretary of the Interior that as much as possible of the material which is already wrought may be used in the work without delay.

Very respectfully, your obedient servant,

THO. U. WALTER,
Architect of U. S. Capitol Extension, &c.

Messrs. BERRY & HIGGINS,
Contractors for Marble-work, U. S. Patent Office.

B.

WASHINGTON, D. C., *April* 18, 1866.

SIR : I have the honor to acknowledge the receipt of your letter of the 9th instant, in which you desire me to communicate to you the circumstances under which Messrs. Berry & Higgins recommenced work in 1864 on the north wing of the Patent Office building; and what was said as to the prices they should be paid for the marble and granite; also whether I understood the work upon the portico of this wing to be included in the original contract, and whether the contract price was, in my judgment, a fair compensation, taking into consideration the high price of labor, &c.

In reply to these interrogatories, I have to state that the original contract for the marble and the marble-work of the north wing of the Patent Office building was made with Mr. John F. Connelly on the 1st day of April, 1857, and that it was not contemplated at that time to erect any portico at all on the north front. This is manifest by the omission of any allusion in the contract to such an appendage, as well as by the fact that Congress did not authorize it until long after the contract in question was made. These facts settle the question most decidedly that the north portico was not included in the original agreement.

On the 16th day of December, 1861, Mr. Connelly transferred his contract, by legal and proper documents, and with the official sanction of the government, by the Secretary of the Interior, to Messrs. Berry & Higgins. Copies of this transfer, with all the documents, including the original contract, are on file in the department.

No progress having been made on the aforesaid north portico at the breaking out of the rebellion, the work was suspended until the 26th day of August, 1864, when, in pursuance of orders from the Secretary of the Interior, I directed the aforesaid contractors, Messrs. Berry & Higgins, to proceed with the work. On the receipt of this order they called upon me and stated, very emphatically, that they could not execute the north portico at the prices paid to Provost, Winter & Co. for the east and west porticoes, the details of which, it was understood, were to govern the architecture of that on the north. The reasons they gave for the conclusions they had thus arrived at were, that the quarries were abandoned and filled with mud and water; the railways, hoisting apparatus, and machinery were destroyed; that everything would have to be commenced anew, and that a fearful rise had taken place in the prices of labor, machinery, and transportation. I told them that inasmuch as the north portico formed no part of their agreement, they would not be held to the prices paid in former times on the eastern and western porticoes, and I urged upon them the necessity of re-opening the quarries without delay, and of proceeding vigorously with the work, at the same time stating to them that the facts of the case would warrant me, as the superintendent of the building, in awarding them a fair and equitable compensation for their labor. In all these suggestions I had the sanction of the Secretary of the Interior, and we felt not only assured that this was the best arrangement we could make under the circumstances, but we considered ourselves fortunate in inducing contractors of so much ability and energy as Messrs. Berry & Higgins to undertake to re-open these quarries, put up the necessary machinery, and deliver the stone at such prices as we might subsequently decide, on the part of the government, were right and proper. And I now have to say that, in view of all the knowledge that the subsequent progress of the work has developed, I am of the opinion that the cost of the material for the north portico is fully double of that which was delivered for the east and west porticoes, and were it left to me to decide I would award them 100 per cent. advance on the prices of the aforesaid porticoes, the erection of which took

place many years ago, and at a time when the quarries were in full operation, and quarry labor and expenses were 100 per cent. less than they now are.

As it regards the workmanship of the aforesaid north portico, I am of the opinion that the same schedule of prices should prevail as governed the payments on the east and west porticoes, with the addition of 60 per cent. to all the items, that being the average increase in the prices of the labor of marble masons since the aforesaid eastern and western porticoes were erected. This would have been my award had the power of fixing these prices remained with me.

In most cases, where a contract is entered into for a certain work, the contractor takes the risk of a rise or a fall of prices, but in the present instance there is no contract to which the contractors may be held, so far, at least, as it regards the portico in question. It therefore devolves upon the government to mete out justice, which can best be done by adding to prices formerly paid for similar work and materials whatever advance a general change of values may have made apparent.

These remarks and conclusions apply as well to the granite and the granite-work of the aforesaid north portico as they do to the marble, excepting only that the cost of procuring the granite was not enhanced beyond the ordinary rise in the cost of quarrying and transportation. I am therefore of the opinion that an addition of 60 per cent. to the prices paid for the granite and the granite-work of the east and west porticoes would form a proper schedule of prices for the northern portico.

I have the honor to remain, sir, very respectfully, yours,

THO. U. WALTER,

Late Architect of United States Capitol Extension, &c.

Hon. JOHN H. RICE,

Chairman of Committee on Public Buildings

and Grounds, House of Representatives.

C.

Comparison of the cost of marble at the Capitol extension and the Patent Office.

PLAIN ASHLER, 4.4 by 1.6 by 1.6, at the Capitol extension :	
12.9 cubic feet marble, at \$1 98 per foot.....	\$25 24
Cutting and setting 24 superficial feet, at 60 cents per foot.....	14 40
Total cost in building	<u>39 64</u>

PLAIN ASHLER, 4.4 by 1.6 by 1.6, at the Patent Office :	
Cutting face, 6.6 superficial feet, at \$1 27 per foot.....	\$8 25½
Cutting beds and bills, 17.6 superficial feet, at 24 cents per foot.....	4 20
Extra cube, 3.3, at \$1 09	3 54¼
Total cost in building	<u>15 99¾</u>

PLAIN ASHLER, 2.4 by 1.6 by 1.6, at the Capitol extension :	
7.4 cubic feet marble, at \$1 98 per foot.....	\$14 52
Cutting and setting 15 superficial feet, at 60 cents per foot.....	9 00
Total cost in building	<u>23 52</u>

PLAIN ASHLER, 2.4 by 1.6 by 1.6, at Patent Office :	
Cutting face, 3.6 superficial feet, at \$1 27 per foot.....	\$4 44
Cutting beds and bills, 11.6 superficial feet, at 24 cents per foot.....	2 76
Extra cube, 1.9, at \$1 09	1 90 $\frac{3}{4}$
Total cost in building.....	<u>9 10$\frac{3}{4}$</u>

HEADER, 3.8 by 2.0 by 1.6, at the Capitol extension :	
17.1 cubic feet marble, at \$1 98 per foot.....	\$33 82
Cutting and setting 29.2 superficial feet, at 60 cents per foot.....	17 50
Total cost in building.....	<u>51 32</u>

HEADER, 3.8 by 2.0 by 1.6, at the Patent Office :	
Cutting face, 8.6 superficial feet, at \$1 27 per foot.....	\$10 79 $\frac{1}{2}$
Cutting beds and bills, 20.8 superficial feet, at 24 cents per foot	4 96
Extra cube, 4, at \$1 09 per foot.....	4 36
Total cost in building.....	<u>20 11$\frac{1}{2}$</u>

CORONA CORNICE, 6 by 6 by 1.6, at the Capitol extension :	
73.5 cubic feet marble, at \$1 98 per foot.....	\$145 36
Cutting and setting 90 superficial feet, at \$1 90 per foot.....	171 00
Total cost in building.....	<u>316 36</u>

CORONA CORNICE, 6 by 6 by 1.6, at the Patent Office :	
Cutting face, beds, and bills, 90 superficial feet, at \$1 33 per foot.....	\$119 70
Total cost in building	<u>119 70</u>

D.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., March 2, 1866.

SIR : In compliance with your request of the 18th ultimo, transmitting to me the petition of Messrs. Berry & Higgins, praying an increase in their contract prices for marble and workmanship on the Patent Office building, and requesting that I would communicate to you such facts bearing upon the subject-matter of the petition, and such suggestions relating thereto as I might deem important and fit, I have the honor to submit herewith a copy of a report from Mr. Clark, the architect, and of Mr. Harkness, the sworn government measurer of marble-work for the Capitol extension, and also for the north portico of the Interior Department building.

From the latter you will perceive how difficult it is to estimate the relative value of this work, on account of its different style and character, as well as the texture of the marble and the location of the quarries. For example : the columns at the Capitol are monolithic, difficult to procure, expensive to handle, transport from the quarry to the building and to dress and polish, while those at the Interior Department building are each composed of several pieces. The marble furnished by the contractors at the Capitol is brought from quarries in New

England, is of fine texture, and is transported by rail to the coast, and thence by water to this city. That furnished for the Interior Department is procured in Maryland, is transported by rail, is of coarser texture, will receive an inferior polish, but is believed to be equally durable as building material.

Perhaps I should add that the price paid for the marble at the Capitol from 1852 to 1865 was 65 cents per cubic foot for all blocks less than 30 cubic feet, and \$1 98 per cubic foot for all over 30 cubic feet; that on the 5th day of April, 1865, my predecessor agreed to increase the price of the former to \$1 02 per cubic foot, and the latter to \$3 20 per cubic foot, and that Mr. Walter, the architect, agreed, as it appears, to increase the price to be paid for dressing certain classes fifty per cent.

Soon after coming into this department I carefully examined the subject of these relative prices with all the lights which I could command, and arrived at the conclusion that the contract price paid for the material and work at the Interior Department is relatively greater than that paid contractors at the Capitol before the allowance in rates agreed to by my predecessor, and that it is relatively something less than that paid at the Capitol under the new rates. And not being sure that the contractors could afford to proceed with the work at the Interior Department, I decided to test their own judgment on that subject by offering them the option of continuing or abandoning their contract. They decided to continue, but stated, as a reason for this decision, that they had expended a considerable sum of money in re-opening their quarries, which would prove a loss if they should then abandon their contract.

I have the honor to be, with much respect, your obedient servant,

JAS. HARLAN, *Secretary.*

Hon. JOHN H. RICE,

Chairman of the Committee on Public Buildings

and Grounds, House of Representatives.

OFFICE UNITED STATES CAPITOL EXTENSION, &c.,

Washington, February 28, 1866.

SIR: I have the honor to transmit herewith a statement of Mr. Jno. C. Harkness, measurer, &c., relating to the comparison of the prices paid for marble and marble-work at the Capitol extension and at the Patent Office building.

I will state that, as these works are not precisely similar, and as some of the prices at the Patent Office include both labor and materials, while at the Capitol they are separate, a more simple manner of arriving at a fair increase for the work at the Patent Office building might be to ascertain the wages given at the time the work was suspended, and those at the time it was recommenced; the difference between the two being the percentage of increase.

Very respectfully, your obedient servant,

EDWARD CLARK,

Architect Capitol Extension, &c.

Hon. JAMES HARLAN,

Secretary of the Interior.

FEBRUARY 27, 1866.

SIR: In response to your inquiry relative to the advance of prices paid for marble and marble-work at the United States Capitol extension, I have the honor to report, that by direction of the Secretary of the Interior, a supplemental agreement was made with the contractor for the marble on the 5th of April, 1865, by which the price was increased from \$1 98 to \$3 20 per cubic foot, or about 61 $\frac{3}{4}$ per cent.

Owing to the advance of stonecutters' wages, August, 1864, from \$2 50 to \$4 per day, Mr. Walter, the architect, authorized an advance of 50 per cent. upon former prices paid for items of marble-work, the price of which had been determined by the government agent from data derived from former wages, viz: \$2 50 per day.

At your request I present below, in parallel columns, such items of marble-work at the United States Capitol extension and at the United States Patent Office, north portico, now being erected, as are similar.

*Marble-work and material, United States
Capitol extension.*

Ashler, marble, \$1 98, increased to \$3 20 per foot; work, 60 cents per foot; no increase.

Shafts of columns \$1,400 each, equal to \$5 80 per cubic foot, cylindrical measure.

Dressing of columns \$475 each, equal to \$1 65 per foot superficial, increased 50 per cent.

Fluting of columns, \$495 each, equal to 84 cents per foot lineal; increased 50 per cent.

Architraves, marble, \$1 98, increased to \$3 20 per cubic foot; dressing of the same, 87 cents per foot superficial, and \$3 per foot lineal, extra for moulding; no increase.

Frieze of entablature, marble, \$1 98 per foot, increased to \$3 20 per foot; dressing 57 cents; no increase.

Cornice in two beds, marble, \$1 98, increased to \$3 20 per cubic foot; dressing, \$2 85 per foot superficial; backs and joints, \$1 62 per foot; top-wash, \$1 26 per foot; modillions, \$2 25 each; and dentils, \$1 each; no increase.

*Marble-work and material, United States
Patent Office, north portico.*

Ashler, \$1 27, fine face, per foot superficial, including workmanship; beds and bills, 24 cents per foot, and extra cube \$1 09 per cubic foot.

Shafts of columns of extra large blocks, for which \$3 60 per cubic foot was paid at eastern portico.

Dressing of columns, no contract price; at the eastern portico 75 cents per foot was paid, beds 60 cents.

Fluting of columns, no contract price; at the eastern portico 90 cents per foot lineal was paid.

Architraves, extra large blocks, no contract price; \$3 60 per cubic foot was paid at the eastern portico, and \$1 per foot superficial for dressing.

Frieze of entablature, contract price \$1 08 per foot superficial, including marble.

Cornice in two beds, contract price \$1 33 per foot superficial, including the marble, and \$1 08 per foot lineal for the drips.

Trusting the above may prove satisfactory, I am very respectfully your obedient servant,

JOHN C. HARKNESS,
Measurer.

EDWARD CLARK, Esq.,
Architect United States Capitol Extension.

E.

WASHINGTON, D. C., March 30, 1866.

To the Hon. COMMITTEE OF PUBLIC BUILDINGS AND GROUNDS:

We most respectfully submit the following statements:

1. The present cost of rough stone delivered at the railroad depot, Washington, D. C.: 1,098 cubic feet rough stone, (cornice,) 2,149 cubic feet rough stone, (column,) 2,731 cubic feet rough stone, (ashler;) 5,978 total cubic feet rough stone; cost, \$17,245 42; which is the cost of rough stone from quarry, exclusive of steam-engine, hoisting machine, and railroad cars employed, (value of \$11,000.) Nothing entering into the above estimate which has not actually been expended. Showing an increased cost (compared with the cost of the same amount of same kind of stone below) of $165\frac{3725}{65063}$ per cent.

2. Present wages of stonecutters, \$4 per day; which (compared with rate of wages below) shows an advance of sixty per cent.

1. Cost of rough stone delivered at the railroad depot, Washington, D. C., at time of suspension of work on the Patent Office: 1,098 cubic feet rough stone, (cornice,) at \$1, \$1,098; 2,149 cubic feet rough stone, (column,) at \$1 50, \$3,223 50; 2,731 cubic feet rough stone, (ashler,) at 80 cents, \$2,184 80; 5,978 total cubic feet rough stone; cost, \$6,506 30.

2. Wages of stonecutters at time of suspension of work on the Patent Office, \$2 50 per day.

FOLLETT vs. DELANO.

MAY 14, 1866.—Laid on the table and ordered to be printed.

Mr. DAWES, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom were referred the memorial and accompanying documents of Charles Follett, esq., contesting the right of Hon. Columbus Delano to a seat in this house as a representative from the thirteenth congressional district in the State of Ohio, have considered the same, and submit the following report:

The election here contested was held on the second Tuesday of October, A. D. 1864, and the official canvass resulted as follows :

	COLUMBUS DELANO.			CHARLES FOLLETT.		
	Home.	Army.	Total.	Home.	Army.	Total.
Coshocton county	1, 645	373	2, 018	2, 136	34	2, 170
Knox county	2, 421	337	2, 758	2, 399	50	2, 449
Licking county	2, 770	339	3, 109	3, 485	56	3, 541
Muskingum county.....	3, 406	609	4, 015	3, 444	57	3, 501
	10, 242	1, 658	11, 900	11, 464	197	11, 661

Showing a majority for the sitting member of two hundred and thirty-nine. The notice of contest on the part of the contestant, and proofs submitted by him, are found in miscellaneous document No. 8 of the present session. The sitting member made no answer and offered no proof.

It was contended by the sitting member that no notice of contest had been given him by the contestant, and if otherwise, that it did not appear that such notice had been given him within the thirty days prescribed by the statute of 1851, prescribing the mode of contesting elections to this house. The only evidence of the service of any such notice is contained in the following affidavits:

STATE OF OHIO, *Knox County*, ss :

Before Joseph Watson, a notary public within and for said county and State, personally appeared James T. Irvine, and makes oath that he served a true copy of the within notice of contest upon Hon. Columbus Delano, by leaving it at

his residence in Mount Vernon, Knox county, Ohio, on the 29th day of December, A. D. 1864.

JAMES T. IRVINE.

Sworn to and subscribed before me this 7th day of January, A. D. 1865.

[SEAL.]

JOSEPH WATSON,

Notary Public, Knox County, Ohio.

STATE OF OHIO, *Licking County, ss :*

Before me, Henry Brumbach, a notary public within and for the county of Licking, State of Ohio, personally came James T. Irvine, and makes oath and says, that in addition to leaving a copy of the within notice at the residence of the said Delano on the 29th day of December, A. D. 1864, affiant afterwards, and on the 5th day of January, A. D. 1865, called upon the said Delano personally as to the service of said notice by copy thereof, left at his residence as aforesaid, and presented to him the original herein, and requested him to acknowledge the service of the same by signing the form of acknowledgment thereto attached in writing, as the same now appears; and also, on the 7th day of January, A. D. 1865, affiant again called upon the said Delano, at his residence in Mount Vernon, Knox county, Ohio, where said copy had been left, as before stated, and renewed the request to have said form of acknowledgment of service signed by said Delano, at which time he positively refused to sign any acknowledgment of said service, saying he would let Mr. Follett procure his own evidence, without his making any admissions in relation thereto. And further affiant saith not.

JAMES T. IRVINE.

Sworn to and subscribed before me this 15th day of November, A. D. 1865.

[SEAL.]

HENRY BRUMBACK,

*Notary Public of the State of Ohio
in and for the County of Licking.*

It was contended by the sitting member :

1st. That the foregoing affidavits, not being depositions taken on notice to the opposite party, in conformity to the provisions of the statute of 1851, before alluded to, are not legal evidence of what they recite.

2d. That if the recitals of these affidavits be taken as proved, still the contestant had failed to "give" him the notice required by the statute. The statute of 1851 (Brightly's Digest, p. 254) contains the following provisions :

"Whenever any person shall intend to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, *give notice*, in writing, to the member whose seat he designs to contest, of his intention to contest the same, and in said notice shall specify particularly the grounds upon which he relies in the contest."

"When any such contestant or returned member shall be desirous of obtaining testimony respecting such election, it shall be lawful for him to make application to any judge of any court of the United States, &c., who shall thereupon issue his writ of *subpœna*, directed to all such witnesses as shall be named to him, requiring the attendance of such witnesses before him at some time and place named in the *subpœna*, in order to be then and there examined respecting the said contested election, in the manner hereinafter provided."

"The party at whose instance such *subpœna* may be issued, shall, at least ten days before the day appointed for the examination of the witnesses, give notice, in writing, to the opposite party, of his intention to examine witnesses,

which notice shall be served by leaving a copy with the person to be notified, *or at his usual place of abode.*"

The question raised by the first objection made by the sitting member is, can service of notice be proved by affidavit, or must the testimony of a witness to the fact of service be obtained, like all other testimony, from witnesses, by deposition taken on notice to the opposite party, in conformity with the statute? The statute does not provide in what manner the fact of service shall be proved, but makes the general provision already cited for taking testimony. It may be noticed that this statute provision does not *require* the testimony of witnesses to be taken in the manner prescribed—only "*it shall be lawful*" to take it in the way therein specified; therefore, in the absence of any statute *requirement* as to the mode of proof of notice of contest, is the affidavit of a third person sufficient? This is the first case since the enactment of the law of 1851 where the question has been raised, so far as the committee know, or where it could, in practice, have been well raised; for though affidavits have been resorted to in almost every case as proof of the service of notice of contest, yet in every instance till the present case there has been an answer from the sitting member admitting the service of notice or waiving proof of it. The sitting member made no answer in this case, and neither admitted nor denied, but left the contestant to prove, that he had served the notice at all, and within the time prescribed by law.

The committee are of opinion that such proof, to be admissible, must be authorized by statute or some rule established by the tribunal before which the testimony is to be used, and that in the absence of these an affidavit could not be admitted according to the principles which govern in the course of all judicial proceedings. To admit an affidavit of a third person, unknown in character to the sitting member, taken without his knowledge, at a time and place and under circumstances wholly kept from him, is to open a door through which great fraud might be practiced if occasion required. It is a fact, too, as easy of proof in the manner pointed out in the statute for taking testimony as any other fact in the case, and it is deemed by the committee the safer way to require its proof in that mode, if the answer of the sitting member does not sufficiently admit the fact or waive the proof of it. This answer, if made, must by law be in possession of the contestant, before he can proceed to the taking of testimony under the statute, and therefore he will always have the means of determining the necessity of proof.

The committee did not, however, close their hearing of the case, with their conclusion upon this point, for the reason that they could not know that the House would agree with this conclusion, and in that event it would become ultimately necessary for them to pass upon the merits of the case. The committee were also desirous of reaching the merits of the case if possible, and therefore, reserving their decision upon all preliminary points, they heard the parties upon the entire proof submitted.

The second point raised by the sitting member was, that "if the recitals of the affidavits of notice be taken as proved, still the contestant had failed to 'give' him the notice required by the statute." The sitting member claimed that the statute required *personal* notice. By the first affidavit of Mr. Irvine it appears that notice was served upon the sitting member "by leaving it at his residence in Mount Vernon, Knox county, Ohio, on the 29th of December, A. D. 1864." The statute provision is, that "the contestant shall give notice in writing to the member whose seat he designs to contest." Is leaving a copy at the residence "giving" the sitting member such notice as the statute requires? Serving of notice by leaving a copy at the residence is not unusual in judicial proceedings, but it is believed by the committee that such service is never legal unless authorized by statute, and can never be substituted for actual notice unless thus sanctioned. In the law of 1851 there is an express provision for leaving a notice

of taking depositions at "the usual place of abode" of the opposite party, but none for such service of notice of contest. A reference to the debate in the House at the passage of this act will show that this omission was designed in order to secure actual notice. When the bill was under debate in the House the following amendment was proposed :

"*Provided*, That if from any cause not within the control of the contestant said notice cannot be given, then said notice shall be given within thirty days after said disability shall cease."

To which it was proposed to add a further proviso, in these words :

"*And provided further*, That in case of the absence of the member whose seat is contested, the notice aforesaid may be served by leaving the same at his place of residence with some member of the family of suitable age to understand the same."

The member offering this last amendment supported it upon the express ground that otherwise "under this bill the notice referred to must be served personally upon the member whose seat it is intended to contest." Yet both amendments were rejected, and the bill, with this interpretation, became a law. The committee are satisfied that it is the correct construction to require personal notice. If personal notice should be impossible by reason of the absence of the sitting member from the county, or otherwise beyond the reach of the notice, or if from any other cause it is impracticable, the House has at all times control over the matter, and will provide a suitable remedy, as was done in the case of *Williamson vs. Sickles*. (Bartlett's Contested Cases, p. 289.)

In the second affidavit of Mr. Irvine it is stated that January 5, 1864, he presented to the sitting member the original of the notice of contest, and requested him to acknowledge the service of it at his house on a previous day, and that the sitting member declined so to do. The committee are of opinion that this would amount to a sufficient service under the law of 1851 if properly proved, and if within the time prescribed by that law. Upon the mode of proof nothing further need be added. Did this service fall "within thirty days of the time when the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same." The statute of Ohio, May 3, 1852, requires this determination to be made "within ten days after the first day of December," but the certificate may be given to the successful candidate at any time thereafter. There is no provision for proclamation or other notice to any one on what day within the specified time this determination is made. There is no way provided by statute by which any one can ascertain on what day within the limit specified the determination has been made. The committee are therefore of opinion that the contestant has thirty days from the last day of the "ten days after the first day of December," unless knowledge has been brought home to him of a determination at an earlier day. Consequently the fifth day of January would be within the thirty days, and in season.

The contestant claimed that the sitting member, by failing to answer, must be taken to have confessed the truth of the allegations in the notice. The statute requires of the sitting member, "within thirty days after the service, to answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election." If the contestant and the sitting member were the only parties interested in the representation of this district, it might not be unfair to hold that the sitting member, upon service of notice upon him according to law, must answer as the law requires, or, by neglect or refusal, be taken as confessing the truth of the allegations made in conformity to law against his right to his seat, and abide the judgment of the House upon such confession. But the contestant and the sitting member are by no means the only parties interested in this representation. The electors of the district, each and every one of them, have a vital interest in that

question, and no one of them can be precluded, by any laches not his own, from insisting that the choice of the majority shall be regarded. No confession of the sitting member, however it might bind him personally, can place the contestant in the seat, unless he is the choice of the majority, nor deprive that majority of its rightful representation. The sitting member may well be deprived, by his neglect to answer, of reliance upon "any other grounds upon which he rests the validity of his election," for he has never given notice of any such grounds; but the committee are of opinion that the House should require proof that the sitting member has not, and that the contestant has, a majority of the legal votes before unseating the one and admitting the other, however the sitting member may have seen fit to conduct his own case in a contest.

The notice of contest (Mis. Doc. No. 8) contains fifteen specifications, but none of these were relied on except those which alleged that there were counted by the canvassers, in making up the majority for the sitting member, "soldiers' votes" from returns so defective in form and substance as to make them wholly illegal and void; that the poll-books from the 78th and 97th regiments Ohio volunteer infantry are not certified to by any of the officers of the election, neither judges nor clerks, as required by the act of March 30, 1864, of the laws of Ohio, section 10, (page 42, printed document;) nor is there a certificate of the oath required by the 5th section of said act. (Pages 41 and 42.) For copies of these poll-books, see pages 18 and 35. The same defect (except as to the oath) is found in the poll-books of the 32d and 27th Ohio volunteer infantry, Veteran Reserve Corps, at Rock Island; 13th regiment Ohio volunteer cavalry, on pages 26, 27, 30, and 39. That the poll-book of the 15th regiment Ohio volunteer infantry does not show when, where, or by whom the election was held, the heading being left blank. (See page 19, printed document.)

That from said polls there was returned and counted for Mr. Delano the following number of votes, viz :

78th regiment, printed document, page 13, votes.....	83
97th regiment, printed document, pages 6, 8, 13, votes.....	132
32d regiment, printed document, pages 6, 8, 10, votes.....	21
Veteran Reserve Corps, printed document, pages 5, 8, 12, votes.....	7
13th regiment, printed document, pages 8, 13, votes.....	18
27th regiment, printed document, page 10, votes.....	17
15th regiment, printed document, pages 5, 12, votes.....	33
In all.....	311
For contestant from these polls, votes.....	1

From the 97th regiment..... 310
therefore should be deducted from the sitting member, by reason of these defective and illegal returns, leaving a majority for the contestant of 84 on the home and soldier vote.

Those portions of the law of Ohio providing for the voting of soldiers in the field are as follows :

SEC. 1. That whenever, during the existence of the present rebellion, any of the qualified voters of this State shall be in the actual military service thereof, or of the United States, and as such shall be absent from the township or ward of their residence, either within or beyond the limits of the State, on the days appointed by law for holding county, State, congressional, or presidential election within the State, such qualified voters shall be entitled at such time to exercise the right of suffrage as fully as if they were present within their respective townships, or other usual place of election. * * * *

SEC. 10. At the close of the polls, the poll-books shall be signed by the judges and attested by the clerks, the names counted, and the number set down at the

foot of the poll-books, and a certificate of the oath of judges and clerks attached thereto.

SEC. 11. Duplicate tally-sheets shall be made out of the votes of each county separately. For this purpose such number of assistant clerks may be appointed by the judges as may be necessary for despatching the business, who shall take the same oath prescribed for the principal clerks. The votes of each county shall be entered on the tally-sheets thereof, in separate columns, opposite the names of the persons voted for, and the tally-sheets duly certified by the judges and attested by the principal clerks in the manner herein provided.

SEC. 12. After the poll-books are signed, the ballot-box shall be opened and the ballots taken out one at a time by one of the judges, who, whilst holding the ballot in his hand, shall announce the county for which it was cast, and the names of the several persons therein contained, together with the respective offices for which each name is designated. He shall then deliver it to the second judge, who, after examining the same, shall pass it to the third judge, who shall string it upon a thread and carefully preserve it. As the ballots are read the clerks and their assistants shall make the proper entries upon the tally-sheets of the proper county.

SEC. 13. When the examination and counting of the ballots are completed, the tally-sheets of each county shall be carefully inspected by the judges, and the number of votes given for each candidate be ascertained and set down opposite his name on the tally-sheet, as indicated in the form herein given.

SEC. 14. After the tally-sheets are certified and attested, the judges shall enclose one tally-sheet for each county in an envelope, and transmit the same, carefully sealed up, by the first mail, express, or other safe means of conveyance, to the clerk of the court of common pleas of such county, who shall file and preserve the same with the poll-books returned from the townships, wards, and election precincts within the county. They shall also enclose one of the poll-books and all the ballots in one envelope or package, and by the next mail, express, or safe means of conveyance, transmit the same, carefully sealed up, to the governor, who, indorsing thereon the date of its receipt, shall deposit the same in the office of the secretary of state, there to remain unopened until delivered to the State board of canvassers, hereafter provided for. They shall enclose the other poll-book, together with one full set of the tally-sheets, in another package or envelope, and by mail, express, or other safe means of conveyance, transmit the same, carefully sealed up, not sooner than five days after the election, to the State auditor, to be by him retained unopened until delivered to the State board of canvassers, as aforesaid.

BOARD OF CANVASSERS.

SEC. 18. The auditor of state, treasurer of state, and secretary of state shall constitute a State board of canvassers. In case any of these officers decline, or is unable to serve, or be a candidate, then the governor, upon notice to him of such declination, or inability, or candidacy, shall appoint some other suitable person to fill the vacancy so created, who, before entering upon the duties of said appointment, shall take and subscribe an oath faithfully and impartially to discharge the same.

CANVASSING RETURNS.

SEC. 20. On the thirtieth day after every such general election, or within three days thereafter, and on the twentieth after any such presidential election, the secretary of state shall, on demand, deliver to the board of canvassers all the poll-books, tally-sheets and ballots so returned and deposited in his office, and the said board shall proceed at once and as rapidly as possible to open and canvass the same, making and certifying duplicate abstracts thereof, by counties,

and sorting and arranging and stringing the ballots of each county separately, declare and certify the number of votes shown by the tally-sheets to have been cast for each candidate therein named respectively; one of which abstracts shall be deposited in the office of the governor, and the other in the office of the secretary of state, to which the said poll-books, ballots, and tally-sheets shall be returned and therein kept on file.

SEC. 21. The said poll-books, ballots, tally-sheets and abstracts in the office of the secretary of state shall be at all times subject to the inspection of any candidate or elector interested in the same, and on demand of any such candidate or elector, and the payment of one dollar, the secretary of state shall make out and certify to the clerk of the court of common pleas of the proper county a copy of any such abstract.

SEC. 22. Before issuing and delivering any commission to any person claiming to be elected to any of the offices referred to in the first section of this act, the governor shall compare the abstract of the soldiers' vote for the proper county or counties in his office, with the abstracts returned to the office of the secretary of state by the clerks for the same counties, and if it shall appear therefrom that the abstract from the counties omit therefrom such number of the soldiers' vote as would change the result of the aggregate votes, he shall issue the commission to the persons shown by said aggregate vote to be entitled thereto.

SEC. 25. The tally-sheet of the county, State and congressional election may be in the form substantially as follows:

Tally-sheet of voters, names of persons voted for, for what office, the number of votes given for each candidate, cast by the qualified electors of _____ county, in the State of Ohio, in the military service of the United States, at an election held on the _____ Tuesday of _____, A. D. _____ in _____, No. _____, O. V. _____, at _____, in the county of _____ and State of _____, of which A. B., C. D., and E. F. were judges, and J. K. and L. M. clerks.

Total vote for each candidate.

For governor A. B.

For representatives in Congress H. R.

SEC. 26. The tally-sheet of presidential elections may be in form substantially as follows:

Tally-sheet of an election held on the Tuesday next after the first Monday in November, A. D. _____, in _____, No. _____, O. V. _____, at _____, in the county of _____ and State of _____, by qualified voters of the State of Ohio, showing the names of the persons voted for for electors of President and Vice-President of the United States for the State of Ohio, and the number of votes cast for each.

Number of votes cast
for each candidate.

L. M.

J. K.

R. M.

F. W.

SEC. 27. The certificate and attestation, to be indorsed on the tally-sheets of all such elections by the judges and clerks, shall be substantially as follows:

It is hereby certified that the within and foregoing tally-sheet is correct, and shows the number of votes cast at this election by the qualified electors of county, State of Ohio, thereat, the names of the persons for whom, and the offices for which, the same were cast, and the number given for each candidate.

A. B.,
C. D.,
E. F., Judges.

Attest: J. K.,
L. M., Clerks.

SEC. 28. When any election under this act shall be held in this State, all the provisions of the general law in relation to frauds at elections and the punishment thereof, consistent with the provisions of this act, shall apply to all elections under this act.

The references here given to the different pages of the record [Mis. Doc. 8] show the defects here alleged to have existed in the poll-books coming up with the other papers from the several camps and voting places in the field to the office of secretary of state. Copies of none of the accompanying papers were produced, and therefore the committee are to presume, in the absence of anything to the contrary, that the other papers required by law to accompany these poll-books did accompany them, and are now on file in their proper place, properly filled up and attested. A reference to the statute cited will show what these papers are which come up with the poll-book, and what use they serve. From this reference it appears that there are to be kept two poll-books, two sets of tally-sheets, the form of which is given in the law, and the ballots themselves counted and strung on a string. The tally-sheet gives the time and place of holding the election, the persons by whom it was conducted, the number of votes cast, and for whom; and the ballots show with equal certainty for whom and how many votes were cast. The poll-book should show when and by whom the election was held, and the names and number of the voters. The law requires one set of tally-sheets to be sent to each county having officers voted for; the other full set of the tally-sheets and one set of poll-books are to be sent to the State auditor; the other poll-books and the ballots are to be sent to the secretary of state. Upon the day specified in the law, the board of canvassers are required, in the manner therein specified, to take and canvass these returns, and "declare and certify the number of votes shown by the tally-sheets to have been cast for each candidate therein named respectively." From these provisions it appears that the result is to be declared from the tally-sheets alone—not from the poll-books at all.

If, therefore, the "tally-sheets" are complete, the means of ascertaining accurately the result are at hand. Indeed, the result could not be determined at all from the poll-books, for they do not disclose for whom a vote was cast. The tally-sheet is the only paper which shows that result. By counting the ballots anew that result may be verified; but the poll-book would render no such aid. That contains only the number and names of the voters in the aggregate. Now, the law requiring the canvassers to declare and certify the number of votes shown by the tally-sheets, and there being no proof or allegation that the tally-sheets were not correct in form and substance, the return made from the tally-sheets, which shows a majority for the sitting member, must prevail. It is competent to overthrow that return by proof, but not without it. *Prima facie* in the first instance, it remains sufficient until evidence in conflict with it shall be introduced satisfying the committee and the House that it is not true. Nothing has been introduced at all conflicting with the result declared from these tally-sheets. Defective poll-books do not conflict with the tally-sheet. They may fail from this defect to corroborate, but do not, therefore, tell a different story. But the law does not require that the tally-sheets shall be corroborated. They stand alone, unless overthrown by positive, not negative, evidence. This view of the law is entirely sustained in a recent case before the supreme court of Ohio, so nearly like this in the particulars here referred to as to be hardly distinguishable from it. It is the case of *Howard vs. Shields*, decided at the December term of that court, A. D. 1865, and not yet published. The committee quote so much of the opinion of the court in that case as bears upon the case under consideration. The syllabus is as follows:

"A regular and perfect tally-sheet of an election held under the soldiers' voting law is of itself *prima facie* evidence in such contest of the votes therein indicated."

And the court say in support of this syllabus :

"The second error assigned is that the court rejected the tally-sheets and poll-books of three several elections held in the army under the acts passed for that purpose.

"The tally-sheets were in conformity to law and unobjectionable. The defects in the poll-books accompanying them were that the number of voters is not stated at the foot, and does not appear otherwise than by counting the names, and that they were not signed by the judges and clerks. In other respects they were regular and according to law. The names of the judges and clerks are recited in the caption of the poll-books, and are signed to the affidavit, which stands immediately below the place where they should have signed the poll-books. These tally-sheets were received and counted by the county canvassers, and form part of the abstract made out by the clerk. The record shows that they were rejected by the court below, together with so much of the abstract of the county canvassers as consisted of the votes therein evidenced.

"In rejecting these papers we are satisfied the court erred. The tally-sheet alone makes a *prima facie* case. It is upon the tally-sheets alone that the county canvassers declare the result. (61 O. L., 92, section 17.) The poll-books are not sent to them. If the tally is good before them, it should, till impeached, be good before the court. The policy of the law seems to be, that, until the contrary is shown, the tally-sheet shall be taken and considered as a true statement of the number of legal votes cast for each candidate. Of course it is open to be impeached by the other party. But it is hardly necessary to say, that an informal or defective accompanying poll-book, in no way contradicting its statements, is not an impeachment.

"If, however, the poll-books were indispensable, was there not substantially a sufficient signing to make them valid as such? The judges and clerks signed the affidavit. We have their oaths and their signatures. Would an additional signature add anything to the verity of the paper? I think not. I think the requirement to sign at the foot, and the requirement to state the whole number of voters, a matter which can be obtained from the body of the poll-book, should be considered as merely directory, and not as absolutely essential. The original act which requires the county canvassers to make their abstract from the poll-book, and not from the tally-sheet, declares that no election shall be set aside for want of form in the poll-books, provided they contain the substance. (1 S. & C. St., 539, section 33.) If there were defects in substance, and not in form, merely, it is enough to say that the tally-sheets were perfect and unimpeached."

The committee concur in and adopt this reasoning; and inasmuch as in the case before them there is no allegation or complaint that the tally-sheets were not perfect, and there has been no attempt to impeach them, the committee do not set aside the result as shown by them. That result shows a majority for the sitting member of two hundred and thirty-nine votes.

They therefore report the following resolution :

Resolved, That the Hon. Columbus Delano is entitled to the seat occupied by him in this House as the representative from the thirteenth district of Ohio in the 39th Congress.

CLERKS OF COMMITTEES.

MAY 14.—Laid on the table and ordered to be printed.

Mr. ASHLEY, from the Committee on the Territories, made the following

REPORT.

The Committee on the Territories, in response to the resolution of the House, passed February 26, asking for information as to the necessity of a clerk for said committee, instruct me to report :

That, in the judgment of the Committee on the Territories, their clerk is necessary for the transaction of its business.

REPORT

IN ANSWER TO A RESOLUTION OF THE HOUSE OF COMMONS

1871

By the Commissioners of the Land Office, in answer to a Resolution of the House of Commons, passed on the 12th of July 1871, relating to the progress of the Commission of the Land Office.

Printed by the Stationers' Company, 1871.

JONATHAN BALL.

[To accompany bill H. R. No. 550.]

MAY 2, 1866.—Ordered to be printed.

Mr. JENCKES, from the Committee on Patents, made the following

REPORT.

The Committee on Patents, to whom was referred the petition of Jonathan Ball for the extension of his patent "for lining metallic pipe with hydraulic cement," report :

That they have had the same under consideration, and find that it received the favorable action of the Senate Committee on Patents at the first session of last Congress, by their report to and passage by the Senate of a bill authorizing the Commissioner of Patents to extend the said patent for the term of seven years; and the report of the Committee on Patents to the House, from which they make the following extract :

"That Jonathan Ball obtained letters-patent on the 15th day of December, 1843, 'for lining metallic pipe with hydraulic cement,' which were extended by the Commissioner of Patents for the term of seven years.

"That he tried to introduce his pipe into public use for about eleven years after he got his patent, without much success on account of the preference given for the tried iron pipe, and the opposition made by engineers and others in the iron pipe interest.

"That having exhausted all his means in experimenting and endeavoring to introduce his pipe, he gave to parties three-quarters of his patent, except the States of Ohio, Kentucky, and Indiana; who thereupon formed a joint stock company under the laws of the State of New Jersey, putting in a cash capital of \$30,000, and issuing to him his share of the stock.

"That great efforts were then made to introduce the pipe, but the fears of the parties wanting pipe, as to its durability, prevented its introduction, except in comparatively small quantities, until its good qualities as a water conductor became fully established by lapse of time.

"That Mr. Ball had to give bonds to parties adopting his pipe to run twenty years, guaranteeing them against loss and damage by taking it. And the officers and other individuals of the company have at all times been required to give like bonds, to run from five to twenty years, that this pipe will permanently answer all the purpose of a water conductor, quite equal to the cast-iron pipe.

"That its real merits being found to consist in conveying the water pure, and its durability equal to and probably greater than cast-iron pipe, it is more extensively adopted by the public.

"That Mr. Ball has sold all of his stock in the company except 10½ shares, worth 80 per cent.—840 dollars, which, with all he has realized, both from the sale of his said stock and his own operations under his patent, amounts to only 20,431 dollars; and allowing one thousand dollars the year for the last seven years for his expenses in travelling and services in and about his interest

in said reserved territory endeavoring to obtain contracts for laying down his pipe, which he considers a moderate charge, and deducting this seven thousand dollars, he has only about thirteen thousand dollars left, for all he has realized from his patent, both for the original and extended terms.

"That Cleveland, Ohio, is the only place, in his reserved territory, in which he has succeeded in getting a contract to lay down his pipe, although he has prepared estimates for several places.

"That if the country had remained at peace, the company as well as he, Mr. Ball, would have done a greatly increased business in laying down the pipe, and he would probably have realized in his stock and dividends and individual operations something like a reasonable compensation for his invention, and time and expenses introducing it.

"Your committee have examined specimens of the pipe manufactured under Mr. Ball's patent, proved by affidavit to have been in use over thirteen years, and taken up expressly to demonstrate its superiority over iron pipe as a conductor of water, both for purity and durability. The interior is like stone, and perfectly smooth, whilst the interior of the iron pipe also exhibited is so rusted as to destroy a considerable portion of its capacity to convey water—from which and other evidence presented this cement pipe appears to be superior to iron pipe as a conductor of water; and the cost of it, as stated, is at least twenty-five per cent. less than iron pipe, and about forty-five per cent. less than lead pipe of equal dimensions.

"That at the time of granting the patent the invention covered by it was new, and that it is also useful and valuable to the public.

"That at the time of making the invention the branch of manufacture to which it belongs was in its infancy, and that great care, labor, and expense was necessary in bringing it to that state of perfection which is always necessary to the production of profitable results.

"That owing to these circumstances, and others beyond the control of the inventor, he has failed to receive the remuneration for his invention to which he is justly and reasonably entitled."

In all of which statements your committee fully concur and adopt; and considering the inventor a great public benefactor, and believing the petitioner justly entitled to the extension prayed for, in order to give him the recompense which the patent laws and the Constitution designed to secure to inventors, the committee are of opinion that the proper relief, however, to which the petitioner is entitled is to allow him to apply to the Commissioner of Patents for a second extension of the patent, to be decided by that officer according to all the provisions of the law now existing as to first extensions, and they have reported a bill for that purpose, the passage of which they recommend.

All of which is respectfully submitted.

COINAGE, WEIGHTS, AND MEASURES.

[To accompany bills H. R. Nos. 596 and 597, and H. Res. No. 141.]

MAY 17, 1866.—Ordered to be printed.

Mr. KASSON, from the Committee on Coinage, Weights, and Measures, made the following

REPORT.

In considering the general subject of a uniform system of coinage, weights, and measures, your committee have had before them—

First. That part of the message of the President and the accompanying documents relating to these subjects.

Second. The report of the National Academy of Sciences, embracing their resolutions approving the metric decimal system of weights and measures.

Third. The report of the United States commissioner to the statistical congress at Berlin.

Fourth. Various memorials of universities and colleges of the United States urging a uniform system of weights and measures, also invariably commending the metric decimal system.

Fifth. The petition of the mayor, judges, and citizens of Baltimore praying for the adoption of the metric system of weights and measures.

Sixth. Several memorials of citizens in different parts of the United States in behalf of the same object.

Seventh. The bill H. R. No. 252, referred to them, and proposing the compulsory and exclusive use, after a limited period, of the metric system.

In addition to the documents and papers referred to them, and in the absence of authority to send for persons and papers, which they did not regard as indispensable to a proper investigation of the subjects at this time, they have examined the whole history of the efforts made in this country since the adoption of the Constitution to substitute for our imperfect and incongruous system of weights and measures, a system at once simple, complete, uniform, and decimal in its relations. The result of that examination is embodied in this report. They have also carefully examined the testimony taken before the select parliamentary committee on this subject in England—testimony very complete, and almost exhaustive of both facts and reasoning—touching the various phases of the questions involved. To these investigations they have added inquiries into the public action of other countries with which we have established commercial relations, on both the European and American continents. They also received the assistance of those distinguished members of the National Academy of Sciences who constituted the special committee of that learned society having charge of these subjects, and particularly of Professor Newton, of that committee, whose efforts in aid of their purposes have been patient and persevering.

The troubled condition of the United States, and the consequent extraordinary labors thrown upon the 38th Congress, prevented your committee from then undertaking that thorough examination which the importance of the questions demanded. They now, however, submit their report and the accompanying bills,

as indicating the conclusions to which they have unanimously come at this period of their deliberations. They do not doubt that a subsequent Congress will be prepared to go further, and will enable the republic to lead, rather than to follow, the action of other commercial and intelligent nations in the complete establishment of this most urgently demanded reform. It is an obligation we owe not only to our present convenience, but also to posterity, to whose benefit all sound reforms invariably tend.

COINAGE.

In respect to the gold and silver coins of the United States no specific change can, with propriety, be recommended for immediate adoption.

The United States early established (July 6, 1785) the decimal system in its application to money, and as a consequence of it, have now a simple, convenient, and admirable measure of values. It only remains to be considered how a common standard of international values, for the use of all civilized and commercial nations, may be most conveniently established.

In this connexion three questions arise:

First. Should a unit entirely new be established? or,

Second. Should the established unit of some one nation, now in use, be adopted by all other nations?

Third. If so, which possesses the greatest advantages?

The advantage of the decimal system is now universally conceded among commercial nations. No country is more ready to concede its superiority than England, which has hitherto failed to adopt it. It is understood that the Bank of England, and some of her great railroad corporations have been compelled to adopt the decimal system in the keeping of accounts. The government has also created a new coin in order to obtain the tenth of a pound.

The objections to the creation of an entirely new unit of value are evidently irresistible, if any existing unit in national use meets the conditions of convenience as a common standard, and of decimal computation; for the people of all nations will be subject to the inconvenience of the adoption of the wholly new system, while the adoption of a decimal system now in use in any one or more nations would relieve at least a portion of the people from the inconveniences attending the change, and would find the people of all nations at least partially acquainted with it at the beginning. This fact, itself, should justify some sacrifice of national *amour propre* for the general good.

In 1856 (August 15) Congress by a joint resolution directed the Secretary of the Treasury to appoint a commissioner to confer with the proper functionaries in Great Britain in relation to some plan of so mutually arranging, on a decimal basis, the coinage of the two countries, that the respective units should be thereafter easily and exactly commensurable. The Committee on Finance in the Senate, in reporting the resolution, remark that no measure can be readily suggested whose realization would mark a more decided epoch in the history of commerce. Under this resolution a very competent gentleman was appointed the commissioner, and on the 6th of January, 1859, his report was communicated to Congress. (Ex. Doc. H. R. No. 36.) Although the British government were not prepared themselves to take the initiative with reference to a project which could not be carried out by it without parliamentary sanction, they were prepared to consider and confer with respect to any proposal that the commissioner might be instructed to make in behalf of the government of the United States.

This result was merely preliminary, but perhaps all that could have been attained under the limited instructions given to the commissioner. But this beginning was not followed up, and there seems to have been no further prosecution of the negotiations.

In his annual report to Congress in December, 1862, the very able Secretary of the Treasury, (now Chief Justice of the United States,) invited the attention of Congress to the present favorable occasion for securing harmony between our own coinage and that of Great Britain. He said:

"In his last report, the Secretary took occasion to invite the attention of Congress to the importance of uniform weights, measures, and coins, and to the worth of the decimal system in the commerce of the world. He now ventures to suggest that the present demonetization of gold may well be availed of for the purpose of taking one considerable step towards these great ends. If the half eagle of the Union be made of equal weight and fineness with the gold sovereign of Great Britain no sensible injury could possibly arise from the change; while, on the resumption of specie payments, its great advantage would be felt in the equalization of exchange and the convenience of commerce. This act of the United States, moreover, might be followed by the adoption by Great Britain of the federal decimal divisions of the coin, and thus a most important advance might be secured towards an international coinage with values decimally expressed."

At the international congress of Berlin, the transactions of which were reported by the United States commissioner, and submitted to Congress, it was resolved as follows:

"First. That the congress recommends that the existing units of money be reduced to a small number; that each unit should be, as far as possible, decimally subdivided; that the coins in use should all be expressed in weights of the metrical system, and should all be of the same degree of fineness, viz: nine-tenths fine, and one-tenth alloy.

"Second. That the different governments be invited to send to a special congress delegates authorized to consider and report what should be the relative weights in the metrical system of gold and silver coins, and to arrange the details by which the monetary system of different countries may be fixed according to the terms of the preceding propositions."

The occasion of the World's Exposition of Industry at Paris in 1867 will furnish the proper opportunity for a free conference between the authorized commissioners of different governments as to the best means of establishing a uniform system of coinage for the common use of the nations of the world. It is to be hoped that the government of the United States will be represented by a commissioner whom it may be authorized to delegate, with special reference to the accomplishment of this great object.

The only interest of any nation that could possibly be injuriously affected by the establishment of this uniformity is that of the money-changers—an interest which contributes little to the public welfare, while, by diversity of coinage and of values, it adds largely to its private accumulations.

The only indispensable condition of this uniformity of value is, that in the standard unit, with its divisions and multiples used in commerce, there shall be in all countries an equal amount of gold (or silver,) with fixed proportion of alloy. Each nation will retain its own devices and legends, and other national peculiarities of mintage. A common name for the standard unit would be desirable, but not essential. The presence of a given amount of precious metal, mixed with a given amount of alloy, is the only absolute prerequisite for the establishment of international uniformity in coinage. The dollar of the United States, four shillings of England, and five francs of France are of approximate value. Several nations of Europe have adopted, under other names, the coinage of France, making it of equal value. The general par value of shares in railroad and other corporations on the continent of Europe, as well as in England and the United States, is one hundred dollars or its approximate equivalent in the money of the different nations. This, of itself, would seem to be a concession of the value which should constitute the standard unit of money. The

United States are now in a favorable condition to yield, with little inconvenience, to a variation in the essential value of their dollar, if it should become necessary, their coin being now withdrawn from general circulation. No opportunity so auspicious for effecting any needed change in quantity of gold or silver, and alloy, can be expected for many years to come. The present would, therefore, seem to be the most desirable period for this government to engage in the preliminary negotiations necessary for the establishment of a common unit of value among all commercial nations. But the committee can make no recommendation of any specific measure beyond the resolution herewith submitted. Their conviction is clear that international uniformity is of the utmost importance for the convenience of our external trade, and of our general intercourse with foreign nations; and that at this time, especially, it is the duty of the government to prosecute with energy its efforts to effect an agreement with the leading nations of Europe on this subject. The consent of the United States, of England and of France, would necessarily ultimate in the consent of all commercial nations.

WEIGHTS AND MEASURES.

Upon the other branch of the subjects with the examination of which this committee is charged they are prepared to report more definitively.

The whole history of our revolutionary confederation, and of the constitutional government of the United States, has been a continuous acknowledgment of the perplexities arising from the diversity of weights and measures throughout their jurisdiction, and of the great desirableness of a uniform and a decimal system. The articles of confederation embraced the following clause:

"The United States, in Congress assembled, shall have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States, fixing the standard of weights and measures throughout the United States."

This power was transferred to Congress by the Constitution of the United States in the following language: "Congress shall have power * * * to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures."

The first President, Washington, in his message to the first Congress assembled under the Constitution, brought the subject before Congress in the following language:

"Uniformity in the currency, weights and measures of the United States is an object of great importance, and will, I am persuaded, be duly attended to."

He again called the attention of Congress to it in his message of December, 1790; and again, in his opening address at the first session of the second Congress, he said:

"A uniformity in the weights and measures of the country is among the important objects submitted to you by the Constitution, and if it can be derived from a standard at once invariable and universal, must be no less honorable to the public councils than conducive to the public convenience."

In accordance with the President's first recommendation, the House of Representatives, on the 15th January, 1790—

"*Ordered*, That it be referred to the Secretary of State to prepare and report to this house, in like manner, a proper plan or plans for establishing uniformity in the currency, weights, and measures of the United States."

On the 15th of July of that year the House of Representatives received from the Secretary of State (Mr. Jefferson) his report of the proper plan for establishing the desired uniformity, as requested by the House.

In this elaborate report the Secretary proposed "that the standard of measure be a uniform, cylindrical rod of iron of such length as, in latitude 45°, in the level

of the ocean, and in a cellar, or other place, the temperature of which does not vary through the year, shall perform its vibrations in uniform and equal arcs, in one second of mean time."

Starting from this standard, he proposes two distinct plans for the consideration of the House, that they might at their will adopt the one or the other exclusively, or the one for the present, and the other for the future time when the public mind may be supposed to have become familiarized to it.

The first plan was *to define and render uniform and stable the existing system*; to make the foot to bear a definite ratio to the standard pendulum rod; to reduce the dry and liquid measures to corresponding capacities by establishing a single gallon of 270 cubic inches, and a bushel to be equal to eight (8) gallons, or 2,160 inches—that is, to one and one-fourth cubic feet; to make the ounce to be the weight of one thousandth part of a cubic foot of water; to retain the more known terms of the two kinds of weights in use, reduced to one series; and to express the quantity of pure silver in the dollar in parts of the weights so defined.

The second plan was to reduce "every branch to the same decimal ratio already established in coins, and thus bring the calculation of the principal affairs of life within the arithmetic of every man who can multiply and divide plain numbers."

Except in the length of the fundamental unit, and in the nomenclature, this second plan was essentially that of the metrical system of France. A fifth part of the standard rod which has been described was taken for the foot, and was proposed for the principal unit. Its length would be about one-quarter of an inch shorter than the foot in common use.

The foot was divided into 10 inches; the inch into 10 lines; the line into 10 points; 10 feet made a decad; 10 decads made a rood; 10 roods a furlong; and 10 furlongs a mile.

The cubic foot was to be the bushel, and was to be multiplied and divided decimally for the several units of dry and liquid measure. The weight of a cubic foot of water divided decimally furnished weights. By a very slight change the silver dollar would weigh an ounce in this new series.

These two plans were sharply opposed to each other, and it was to be expected that the desire for a decimal division, and symmetry of system, on the one hand, and the reluctance to make a violent change on the other, should elicit no little discussion.

After the preparation of his report, and before its communication to the House, Mr. Jefferson received the news that propositions had been made in the national assembly of France, and in Parliament, which looked to the creation and establishment of a uniform international system of weights and measures. The movement in the former body resulted in the formation of the present metrical system of France.

This report was communicated to the Senate in December of that year, and Senators Izard, Monroe, Langdon, and Schuyler were appointed a committee to take it into consideration. That committee reported on the 1st of March, 1791, that, "as a proposition has been made to the national assembly of France for obtaining a standard of measure which shall be invariable, and communicable to all nations, and at all times; as a similar proposition has been submitted to the British Parliament in their last session; as the avowed object of these is to introduce an uniformity in the measures and weights of the commercial nations; as a coincidence of regulation by the government of the United States on so interesting a subject would be desirable, your committee are of opinion that it would not be eligible, at present, to introduce any alteration in the measures and weights which are now used in the United States." This report was adopted.

The second Congress, which met for its first session at Philadelphia, in October, 1791, had the subject again urged upon its attention by the third appeal of

President Washington in his opening address. A week later the Senate appointed a committee, consisting of very nearly the same members as the committee of the preceding Congress, to take into consideration the subject of weights and measures, and report thereon.

The committee reported on the 4th of April, 1792, recommending the adoption of the second plan proposed by Mr. Jefferson, which was an entirely decimal and symmetrical system.

The consideration of the report was deferred until the next session of Congress, and finally referred to a special committee, and their report was not finally disposed of.

During the second session of the third Congress the President received from the French envoy a communication describing the newly adopted metric system of France, together with copies of the provisional meter and kilogram. This communication was sent to Congress on the 8th of January, 1795.

During the first session of the fourth Congress this communication of the French envoy and the report of Mr. Jefferson were referred to a committee of the House, which reported on the 12th of April, 1796. The committee assumed that all measures of surface, capacity, and weight should be regulated by measures of length; that the standard units of length and weight should not differ in a sensible degree from the present foot and pound, and that the standards should be referable to some uniform principle in nature if it can be made to appear that reference may be had to such a measure with sufficient certainty of uniformity in the result of different experiments, and without much time, trouble, and expense in making them.

They propose, therefore, that experiments be undertaken for determining the length of the proposed pendulum rod, and that from this should be derived the standard foot and standard pound. While they suggest four modes for dividing the weights, and indicate their decided preference for the decimal divisions, they avoid the vexed question of the mode of division of the foot, and also the kindred one of the contents of the bushel and gallon.

A bill to provide for the experiments passed the House, but on the third reading in the Senate was postponed to the next session, and so lost.

During the next twenty years three or four committees were appointed to examine the subject and report, but no action resulted therefrom. It was not until after the close of the war of 1812 that serious consideration of it was again resumed.

The difficulties of the questions remained. It was still uncertain whether the metrical system would eventually succeed even in France. It does not appear, therefore, that the adoption of that system was urged as a settlement. We could not be expected to give up our old measures without a resulting improvement that should be permanent. On the other hand, to divide our units decimally would destroy uniformity with England, with the unpleasant prospect before us of a second change if another decimal system should become elsewhere universal.

In his annual message, sent to the fourteenth Congress at its second session, (December 3, 1816,) President Madison urges the subject upon their attention in the following language:

"Congress will call to mind that no adequate provision has yet been made for the uniformity of weights and measures, also contemplated by the Constitution. The great utility of a standard fixed in its nature, and founded on the easy rule of decimal proportions, is sufficiently obvious. It led the government at an early stage to preparatory steps for introducing it; and a completion of the work will be a just title to the public gratitude."

As a consequence of this decided expression of the President, the Senate, just before the close of the session, (March 3, 1817,) referred it to the Secretary of State to prepare and report to them "A statement relative to the regulations

and standards for weights and measures in the several States, and relative to proceedings in foreign countries for establishing uniformity in weights and measures, together with such propositions relative thereto as may be proper to be adopted in the United States." Similar action more than two years later was taken by the House of Representatives.

Without waiting for the reply of the Secretary of State, a committee of the House, on the 25th of January, 1819, presented a report on the subject. After speaking of the difficulty of introducing the new system, the committee recommends, in effect, the first plan proposed by Mr. Jefferson; also, that standards conformed to those in most common use among us should be accurately made and carefully preserved at the seat of government, and that correct models should be placed in the different districts of the country. Resolutions providing for the establishment of a commission to execute this plan, and defining the duties of such commission, were reported to the House by the committee.

The report of Hon. John Quincy Adams, Secretary of State, to whom the subject had been referred in March, 1817, was transmitted to the Senate on the 22d February, 1821. The extent of the ground covered by this learned report, and its elaborate character, satisfactorily explain why four years had been employed in its preparation. It considers, successively, the origin of measures and weights in the earlier necessities of savage life, their modifications with human progress, and, by positive law, the Hebrew, the Greek and the Roman meterology; he then adds:

"Among the nations of modern Europe there are two who, by their genius, their learning, their industry, and their ardent and successful cultivation of the arts and sciences, are scarcely less distinguished than the Hebrews, from whom they have received most of their religious, or the Greeks, from whom they have received many of their civil and political institutions. From these two nations the inhabitants of these United States are chiefly descended, and from one of them we have all our existing weights and measures. Both of them, for a series of ages, have been engaged in the pursuit of a uniform system of weights and measures. To this the wishes of their philanthropists, the hopes of their patriots, the researches of their philosophers, and the energy of their legislators have been aiming with efforts so stupendous, and with perseverance so untiring, that to any person who shall examine them it may well be a subject of astonishment to find that they are both yet entangled in the pursuit at this hour, and that it may well be doubted whether all their latest and greatest exertions have not hitherto tended to increase diversity, instead of producing uniformity."

This leads to an elaborate historical description of the English and French systems of weights and measures, together with a brief summary of the earlier discussions of the subject in this country.

The importance of uniformity between the United States and England is recognized and urged.

On the other hand, Mr. Adams was no less strongly impressed with the immense advantage of the metrical system of France. It was at that day still a question whether it would establish itself, exclusively, even in its native land, yet the hopes which it excited led the Secretary to say, with the admiration of a poet and the fervor of a prophet: "This system approaches to the ideal perfection of uniformity applied to weights and measures, and whether destined to succeed or doomed to fail, will shed unfading glory upon the age in which it was conceived, and upon the nation by which its execution was attempted, and has been in part achieved. In the progress of its establishment there, it has been often brought in conflict with the laws of physical and moral nature, with the impenetrability of matter, and with the habits, passions, prejudices and necessities of man. It has undergone various important modifications. It must undoubtedly still submit to others before it can look for universal adoption. But

if man upon earth be an improvable being, if that universal peace which was the object of a Savior's mission, which is the desire of the philosopher, the longing of the philanthropist, the trembling hope of the Christian, is a blessing to which the futurity of mortal man has a claim of more than mortal promise; if the spirit of evil is, before the final consummation of things, to be cast down from his dominion over men and bound in the chains of a thousand years, the foretaste here of man's eternal felicity, then this system of instruments, to accomplish all the changes of social and friendly commerce, will furnish the links of sympathy between the inhabitants of the most distant regions; the meter will surround the globe in use as well as in multiplied extension, and one language of weights and measures will be spoken from the equator to the poles."

After an analysis and contract of the respective advantages and disadvantages of the English and French weights and measures, so far as the advantages or disadvantages could be derived from theory, and the very imperfect experience of the French up to that time, Mr. Adams adds :

"These views are presented as leading to the conclusion that, as final and universal uniformity of weights and measures is the common desideratum of all civilized nations, as France has formed, and has for her own use established, a system adapted by the highest efforts of human science, ingenuity and skill, to the common purposes of all; as this system is yet new, imperfect, susceptible of great improvements, and struggling for existence even in the country which gave it birth, as its universal establishment would be a universal blessing, and as, if ever effected, it can only be by consent, and not by force, in which the energies of opinion must precede those of legislation, it would be worthy of the dignity of the Congress of the United States to consult the opinions of all the civilized nations with whom they have a friendly intercourse, to ascertain, with the utmost attainable accuracy, the existing state of their respective weights and measures, to take up and pursue with steady, persevering, but always temperate and discreet exertions, the idea conceived, and thus far executed, by France, and to co-operate with her to the final and universal establishment of her system." * * *

"In contemplating so great but so beneficial a change as the ultimate object of the proposal now submitted to the consideration of Congress, it is supposed to be most congenial to the end to attempt no present change whatever in our existing weights and measures, to let the standards remain precisely as they are, and to confine the proceedings of Congress at this time to authorizing the Executive to open these communications with the European nations where we have accredited ministers and agents, and to such declaratory enactments and regulations as may secure a more perfect uniformity in the weights and measures now in use throughout the Union."

After giving statements of the laws in force in the several States, the report concludes by submitting to Congress a plan consisting of two parts, the principles of which were :

1. To fix the standard with the partial uniformity of which it is susceptible, for the present excluding all innovation.
2. To consult with foreign nations for the future and ultimate establishment of universal and permanent uniformity.

"All trifling and partial attempts of change in our existing system, it is hoped, will be steadily discountenanced and rejected by Congress, not only as unworthy of the high and solemn importance of the subject, but as impracticable to the purpose of uniformity, and as inevitably tending to the reverse, to increased diversity, to inextricable confusion."

Congress has heretofore authorized the construction of standards of the common measures of length, weight, and capacity, and their distribution to the several States, as well as to the custom-houses and certain departments of the public service, but has hitherto failed to take a decisive step in advance.

In the mean time, the separate action of foreign governments, as will hereafter

be shown, has produced the results which the Secretary sought by his proposition for concurrent action. The desire he expressed for the concurrence of the British government especially is now realized in the initiatory steps taken by Parliament in the authorized adoption of the metric system.

For this and other prior reasons the second part of Mr. Adams's plan has not been effectively prosecuted. Its objects have not, however, been forgotten, and have occupied, during the last ten years more especially, the serious attention of the people and the government. Resolutions of State legislatures, petitions from scientific and other organized societies, recommendations from executive officers, and direct action of Congress—these all indicate a dissatisfaction with the present defective system of our weights and measures and an earnest desire for a decimal system common to all nations.

In his annual report of December 9, 1847, the Secretary of the Treasury (Hon. R. J. Walker) commends the subject to the attention of Congress. He says :

“Coins, as well as weights and measures, for the benefit of all nations, ought to be uniform throughout the world ; and if our decimal system of coinage should be more simple and perfect than that of any other nation, it ought to be, and ultimately will be, adopted, and lead as far as practicable to the introduction of the decimal system of weights and measures, or at least its simplification, so that ultimately the coin and the weights and measures may be simple and uniform throughout the world.”

A few months later the superintendent of weights and measures, Professor Bache, in his report, urges attention to the subject. (Ex. Doc. 84, 30th Cong., 1st sess., July 30, 1848 :)

“No one who has discussed the subject of weights and measures in our country has considered the present arrangement as an enduring one. It has grown up with the growth of European society, and is deficient in simplicity and in system. The labor which is expended in mastering the complex denominations of weights and measures is labor lost. Every purpose for which weights and measures are employed can be answered by a simple and connected arrangement. * * * * *

“In our own country the present arrangement of weights and measures has been considered by the great men who have written upon it as temporary.”

After speaking of the two parts of Mr. Adams's plan, and asking whether the time has now come for urging the measures involved in the second part, he says :

“The present time seems especially to invite an effort of this kind. In England the subject of weights and measures is under consideration by a commission, and on the continent the new relations of States hitherto separated appear to be favorable to this object. Such changes could readily be effected by suitable means in one generation by introducing the new measures through the elementary schools. * * * * *

“I am of opinion that the present weights and measures, whether declared to be provisional or not, will prove to be really so in the progress of our Union, and that arrangements more worthy to be called a system will one day prevail.”

In a subsequent report he says :

“In Holland the new weights and measures were introduced through the schools. The children of the country becoming familiar with them in the primary schools, seeing the actual material standards of length, capacity, and weight at frequent and stated times in early youth, and retaining that familiarity as they passed into the higher schools, would be readily prepared for their universal use when reaching mature life. But the old material standards must disappear, and not, as in our coinage, be tolerated by usage alongside of the

lawful standards, destroying what Mr. Adams has so well called the uniformity of fact.

* * * * *

“Coming into the charge of an unfinished work, I conformed, as far as I could, to the plans already in part executed by my predecessor, Mr. Hassler, as I could co-operate heartily in the endeavor to produce that uniformity of fact which was the basis of the system. I have not failed, from time to time, to press forward the second part of this established system, namely, the endeavor at universal uniformity.

* * * * *

“The first part of Mr. Adams’s plan has (as far as legal standards are concerned, and in a great degree) been accomplished; but the second part, that which recommends the consultation with foreign nations for the ultimate establishment of universal uniformity remains yet to be acted on.”

* * * * *

“By reference to the interesting account of the metrical system in the letter of Mr. Silbermann, it will be seen that it has extended widely beyond the boundaries of France, and has been adopted by law in Spain, Belgium, Greece, Holland, Lombardy, Poland, and Switzerland, in Europe; and Chili, Colombia, and Mexico, on this continent.”

* * * * *

“Has not the time arrived, in the general progress of commercial and international intercourse, and the rapid advance of our own country in science, wealth, and power, when her voice should be heard in an important matter like this? Should not Congress make the proposition to all nations to meet by their representatives, and consult for the purpose of establishing permanent and universal uniformity of weights and measures? Such action could not fail to meet with a response due to the greatness of the subject, and, if the great object be attained, to lead to results productive of vast and lasting benefit to the human race.”

The legislature of New Hampshire, by joint resolution, approved June 28, 1859, requested their senators and representatives to urge upon Congress the adoption of a decimal system. The legislature of Maine, March 20, 1860, by joint resolution, expressed in still more decided language their desire for a uniform international decimal system of weights and measures and coins.

The legislature of Connecticut by resolution (1861) seconded this action of Maine. In June, 1864, they further recommended to the proper school officers to provide for teaching the metrical system in all schools of the State.

The Secretary of the Treasury, (now Chief Justice of the United States,) in his annual report, December 9, 1861, again brought the subject to the attention of Congress.

“The Secretary desires to avail himself of this opportunity to invite the attention of Congress to the importance of a uniform system, and a uniform nomenclature of weights, measures, and coins, to the commerce of the world, in which the United States already so largely shares. The wisest of our statesmen have regarded the attainment of this end so desirable in itself as by no means impossible. The combination of the decimal system with appropriate denominations in a scheme of weights, measures, and coins for the international uses of commerce, leaving, if needs be, the separate systems of nations untouched, is certainly not beyond the reach of the daring genius and patient endeavor which gave the steam-engine and the telegraph to the service of mankind. The Secretary respectfully suggests the expediency of a small appropriation to be used in promoting interchange of opinions between intelligent persons of our own and foreign countries on this subject.”

In May, 1863, an international postal congress was held at Paris, at the suggestion of the government of the United States, in which nearly all the Euro-

pean and some of the American governments were represented. Among the resolutions adopted at that congress were the following:

"SEC. 7. The rates upon international correspondence shall be established according to the same scale of weight in all countries.

"SEC. 8. The metrical decimal system, being that which best satisfies the demands of the postal service, shall be adopted for international postal relations, to the exclusion of every other system.

"SEC. 9. The single rate upon international letters shall be applied to each standard weight of fifteen grams, or fractional part of it."

At that congress, representing nations having many different systems of weights and measures, the expression in favor of the metric system was unanimous.

In the autumn of 1863 an international statistical congress was held at Berlin, and at the instance of the Prussian government the Secretary of State appointed a commissioner to represent the United States therein. His report of the transactions of the congress was transmitted to the Senate on the 18th of June, 1864. All, or nearly all, of the nations of Europe were represented. The subject of a uniform international system of coinage, weights, and measures was presented upon the report of a numerous committee, which had been appointed at the previous meeting held at London three years before. This committee contained representatives of fourteen different nations. Its report was transmitted to Congress and published. It contains detailed information as to the weights, measures, and coins of the European and a portion of the American nations. The statistical congress, after discussion, resolved that the adoption of the same measures in international commerce is of the highest importance, and that the metric system is the most convenient of all that can be recommended for international measures.

In the same year, (1863,) by request of the Secretary of the Treasury, the National Academy of Sciences appointed a committee to consider and report upon the subjects embraced within the jurisdiction of this committee. After patient investigation and deliberate discussion that committee made the following report, which was adopted by the Academy with almost entire unanimity:

"Report of the Committee on Weights, Measures, and Coinage, to the National Academy of Sciences, January, 1866.

"The committee are in favor of adopting, ultimately, a decimal system; and, in their opinion, the metrical system of weights and measures, though not without defects, is, all things considered, the best in use. The committee therefore suggest that the academy recommend to Congress to authorize and encourage by law the introduction and use of the metrical system of weights and measures; and that with a view to familiarize the people with the system, the academy recommend that provision be made by law for the immediate manufacture and distribution to the custom-houses and States of metrical standards of weights and measures; to introduce the system into the post offices by making a single letter weigh fifteen grammes instead of fourteen and seventeen-hundredths or half an ounce; and to cause the new cent and two-cent pieces to be so coined that they shall weigh, respectively, five and ten grammes, and that their diameters shall be made to bear a determinate and simple ratio to the metrical unit of length."

In concluding this review of the agitation of and action upon these questions in the United States, it only remains to add that the House of Representatives of the 38th Congress, at its first session, established, by an amendment of its rules, a standing committee to take jurisdiction of this great reform. As efforts to carry that reform into effect had hitherto been spasmodic rather than consecutive, it was thought proper thereafter to crystallize them through the action of a

permanent committee, before whom they should perpetually reappear until this conceded great desideratum should become an accomplished fact.

But while the United States was the first to move in the direction of a decimal system resting upon a natural and universally attainable standard, the effect of the delay of this government, with a view to harmony in action with England, has been to render it possible that the United States will be among the last in the column of nations to take this great step in civilization.

Our predecessors of the era of Mr. Adams found the interests of this country much more dependent upon England than they are at this day. England herself was less subject at that time to the effect of foreign influence than at present. The failure of these two governments to unite upon a system resting upon a standard of their own, at a time when France stood alone for the metric system, has been fatal to the adoption of the arbitrary system of those countries by other nations. Convinced of its imperfections, no effort was made to introduce it into other countries, and any modification of it with a view to its improvement would only have created an additional system to those already in use in the world, without having in any of its features a superiority over the metric system. In the mean time the simple order, beauty, and convenience of the metric system has so commended it to universal acceptance that it has already been adopted exclusively or permissively by nearly all the nations of christendom.

In France, Spain, Belgium, and Portugal, it has been established to the exclusion of other weights and measures. In Holland other weights are allowed in compounding medicines only. Sardinia and Lombardy have long possessed the system, and it has now been extended to the whole of Italy. Greece has introduced it with some modifications. In Austria, and most of the other German States, the half kilogram has been for some time a common unit of weight in the custom-houses, and on railways. During the past year your committee are informed that delegates of all the German States, at a meeting at Frankfort-on-the-Main, signed a convention agreeing to introduce into the several States systems of which the meter should be the basis. Prussia, which had previously withheld assent, thus appears to join in the common movement. Switzerland will necessarily follow Germany, and already has units that are aliquot parts of the meter and the kilogram. The King of Sweden and Norway has appointed a commission to consider and report on the best mode of introducing the metric system among his subjects. Denmark may be expected to follow the recommendation of the Scandinavian convention that advised it. We have the assurance of M. Kupfer, the distinguished superintendent of weights and measures of the Russian empire, that if England should adopt the metric system, Russia will also adopt it.

The system has also made great progress among the States upon this continent.

Six years since it was adopted by the Mexican republic, and its use decreed at once in the public offices, and after a certain period in private contracts. This period expired about the time of the imperial invasion under which that republic is now suffering. It was introduced into Chili in 1848, and is compulsory from the 1st of June, 1865. In the United States of Colombia, and in Venezuela, it has been in use along with other weights and measures since 1853. In Brazil the meter is used for cloth measure, and the liter for wine measure. In Equador the system was decreed to come into full operation on the 15th of October next. In Guatemala, San Salvador, and the Argentine Republic, it is in partial use among the people.

The action of England is, however, of greater importance to us, owing to our close relations with her, and with her colonies, by a common language, by our large commerce, and what is, perhaps, more pertinent to this question, by common weights and common measures.

On the 8th of April, 1862, the House of Commons appointed a select com-

mittee of fifteen members to "consider the practicability of adopting a simple and uniform system of weights and measures, with a view not only to the benefit of internal trade, but to facilitate trade and intercourse with foreign countries." The committee examined thirty-nine witnesses, among whom were nine from foreign countries in which the metric system was in force. They were generally men of distinguished intelligence, who were attending the Industrial Exhibition as commissioners from their respective countries. The list of witnesses included seven merchants, six civil engineers and architects, ten professors and teachers, two manufacturers, four actuaries and accountants, the astronomer royal, the master of the mint, and the secretary of the post office. That committee appear to have been unanimous in recommending the introduction of the metrical system into Great Britain.

On the 13th of May, 1863, a bill was prepared and brought in by members of that committee, by the terms of which the metric system of weights and measures was introduced into Great Britain, and its use by the people made compulsory after three years. This bill was passed by the House of Commons by a large majority, but does not appear to have been acted on by the House of Lords. At the next session (February, 1864) a bill was introduced by the same gentlemen which changed its purport from a compulsory to a permissive measure.

This bill passed the House of Commons on the 29th of June, the House of Lords on the 21st of July, and became a law. The vote of the House of Commons approving a compulsory measure, and the subsequent enactment of a permissive law, must be regarded as evincing a deliberate intention to introduce the metric system into England, and as giving up any purpose of creating a separate system founded upon the yard, the foot, or the inch; and as paving the way for the ultimate exclusive adoption of the metric scheme.

The general consent of so many nations, highly enlightened, and deeply interested in the promotion of trade, and in popular progress, affords in itself an argument almost conclusive for, first, uniformity; second, decimalization; and, third, the metric plan.

But habit makes us so submissive even to constant inconvenience that your committee submit herewith three tables showing the perplexities and embarrassments involved in our customary weights and measures, in every effort for their mutual conversion, and even in all efforts of the memory to retain the relations of their several parts. They multiply most seriously the arithmetical rules required, embarrass mathematical calculations, clog the accounts of trade, increase the labors of teachers and scholars alike in our schools, absorb in their acquisition a great portion of the time which would be more usefully applied to other studies, and necessarily appreciate the cost of a common business education. With a decimal system all the ordinary transactions of popular trade could be computed by any person familiar with the simplest relations of numbers, and without pencil or paper to aid the mind, now embarrassed by their complexity. But with the actual system in use, in the table of lengths we ascend by the factors 12, 3, $5\frac{1}{2}$, 40, 8, and 3; or else by $7\frac{2}{3}$, 25, 4, and 80.

In weights we have three series, nearly distinct—Avoirdupois, Troy, and Apothecary's. The only common unit is the grain. In the first, we ascend from grain by the factors $27\frac{1}{2}$, 16, 16, 25 or 28, 4, and 20; in the second the factors are 24, 20, and 12; in the third, 20, 3, 8, and 12.

In measures of capacity there are simple relations between the several liquid measures, as well as between the dry measures, and also the cubic measures; yet, in comparing the measures of the three different series, there are no useful relations whatever.

The accompanying tables exhibit to the eye this want of system. They give the number by which it is necessary to multiply, or divide, in order to reduce one denomination to another. These factors, when fractional, are reduced to their lowest terms.

I. Table of usual lengths, exhibiting the number of units of each denomination contained in each larger denomination.

	Lines.	Inches.	Links.	Feet.	Yards.	Fathoms.	Rods.	Chains.	Furlongs.	Miles.	Leagues.
The inch contains	12	1	1								
The link contains	$2\frac{3}{4}$	$\frac{128}{9}$	$\frac{50}{3}$								
The foot contains	144	12	$\frac{40}{3}$	1							
The yard contains	432	36	$\frac{40}{1}$	3	1						
The fathom contains	864	72	$\frac{100}{1}$	6	2	1					
The rod contains	2376	198	25	$\frac{33}{2}$	$\frac{11}{2}$	$\frac{11}{4}$	1				
The chain contains	9504	792	100	66	22	11	4	1			
The furlong contains	95040	7920	1000	660	220	110	40	10	1		
The mile contains	760320	63360	8000	5280	1760	880	320	80	8	1	
The league contains	2280960	190080	24000	15840	5280	2640	960	240	24	3	1

II. Table of weights in use, exhibiting the number of units of each denomination contained in each larger denomination.

	Grains.	Scruples.	Penny-weights.	Avoir. drachms.	Apoth. drachms.	Avoir. ounces.	Troy ounces.	Troy pounds.	Avoir. pounds.	Short ton.	Long ton.
The scruple contains	20	1									
The pennyweight contains ..	24	$\frac{4}{3}$	1								
The avoird. drachm contains ..	$3\frac{1}{2}$	$1\frac{1}{2}$	$\frac{75}{6}$	$\frac{3}{4}$							
The apoth. drachm contains ..	60	3	$\frac{5}{2}$	16	1						
The avoird. ounce contains ..	$4\frac{1}{2}$	$1\frac{1}{8}$	$\frac{45}{4}$	$\frac{307}{16}$	$\frac{175}{2}$	1					
The Troy ounce contains	480	24	20	$\frac{307}{4}$	8	$\frac{175}{4}$	12				
The Troy pound contains	5760	288	240	$\frac{307}{1}$	96	$\frac{307}{1}$	12				
The avoird. pound contains ..	7000	350	$\frac{256}{1}$	256	$\frac{307}{1}$	16	$\frac{175}{1}$	1			
The short ton contains	14000000	700000	$\frac{175}{1}$	512000	$\frac{700000}{1}$	32000	$\frac{175}{1}$	$\frac{175}{1}$	2000	1	
The long ton contains	15680000	784000	$\frac{196000}{1}$	573440	$\frac{784000}{1}$	35840	32000	$\frac{175}{1}$	2240	$\frac{1}{2}$	1

III. Table of usual measures of capacity, exhibiting the number of units of each denomination contained in each larger denomination.

	Fluid drachms.	Cubic inches.	Fluid ounces.	Gills.	Pints.	Fluid quarts.	Dry quarts.	Gallons.	Pecks.	Cubic feet.	Bushels.	Cubic yards.
The cubic inch contains . . .	$\frac{1024}{231}$	1										
The fluid ounce contains . . .	8	$\frac{131}{8}$	1									
The gill contains	32	$\frac{231}{32}$	4	1								
The pint contains	128	$\frac{231}{8}$	16	4	1							
The quart contains	256	$\frac{231}{4}$	32	8	2	1						
The dry quart contains	$\frac{1720336}{6773}$	$\frac{107521}{1600}$	$\frac{215942}{6773}$	$\frac{107521}{11680}$	$\frac{107521}{46200}$	$\frac{107521}{92400}$	1					
The gallon contains	1024	231	128	32	8	4	$\frac{369600}{107521}$	1				
The peck contains	$\frac{13762688}{6773}$	$\frac{107521}{200}$	$\frac{1720336}{6773}$	$\frac{430984}{6773}$	$\frac{107521}{5773}$	$\frac{107521}{11680}$	8	$\frac{107521}{46200}$	1			
The cubic foot contains	$\frac{590224}{6773}$	1728	$\frac{73728}{6773}$	$\frac{18432}{77}$	$\frac{4608}{6773}$	$\frac{2304}{6773}$	$\frac{691200}{107521}$	$\frac{576}{77}$	$\frac{345600}{107521}$	1		
The bushel contains	$\frac{65050752}{6773}$	$\frac{107521}{50}$	$\frac{6881344}{6773}$	$\frac{1720336}{6773}$	$\frac{430984}{6773}$	$\frac{215942}{6773}$	32	$\frac{107521}{11680}$	4	$\frac{107521}{86400}$	1	
The cubic yard contains	$\frac{15225248}{6773}$	46656	$\frac{1920656}{6773}$	$\frac{427664}{6773}$	$\frac{124416}{6773}$	$\frac{62208}{6773}$	$\frac{18662400}{107521}$	$\frac{15552}{77}$	$\frac{9331200}{107521}$	27	$\frac{2332800}{107521}$	1

These tables indicate that none but professional persons can be expected to master and retain their knowledge of the arithmetical intricacies of our present scheme, as taught in schools and used in practical life. If, to those denominations there mentioned, we should add nails, ells, barleycorns, the two quarters, the two cwts., the ale measures, and the various barrels, pipes, and hogsheads, the lists of difficulties would be formidably increased.

In marked contrast with this is

THE METRIC SYSTEM.

It is orderly, simple, and perfectly harmonious, having useful relations between all its parts. It is based on the METER, which is its principal and only arbitrary unit. The meter is a measure of length, and was intended to be, and is very nearly, one ten-millionth of the distance on the earth's surface from the equator to the pole. It is 39.37 inches, very nearly.

The *are* is a surface equal to a square whose side is 10 meters. It is nearly four square rods.

The *liter* is the unit for measuring capacity, and is equal to the contents of a cube whose edge is a tenth part of the meter. It is a little more than a wine quart.

The *gram* is the unit of weight, and is the weight of a cube of water, each edge of the cube being one one-hundredth of the meter. It is equal to 15,432 grains.

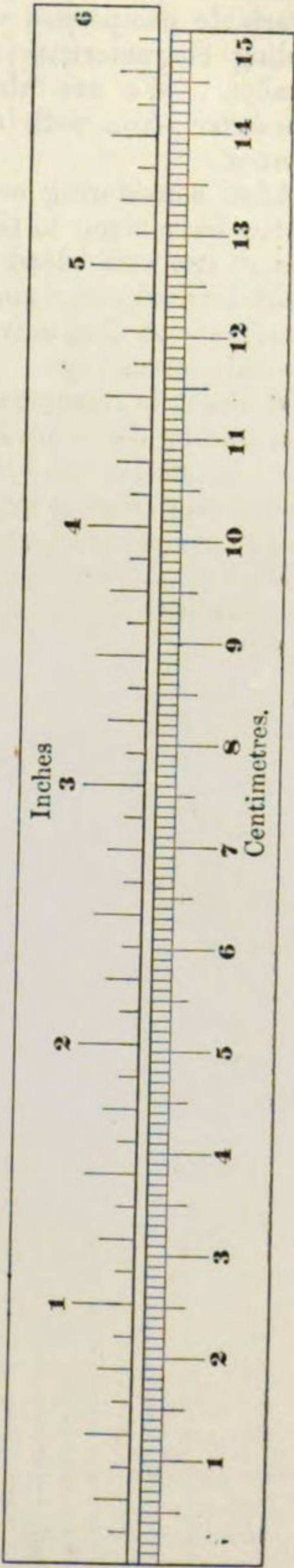
The *stere* is a cubic meter.

Each of these units is divided decimally, and larger units are formed by multiples of 10, 100, &c. The successive multiples are designated by the prefixes deka, hecto, kilo, and myria; the subordinate parts by deci, centi, and milli; each having its own numerical significance.

Scheme of the weights and measures of the metric system.

Ratios.	Lengths.	Surfaces.	Volumes.	Weights
1000000 100000 10000 1000 100 10 1 $\frac{1}{10}$ $\frac{1}{100}$ $\frac{1}{1000}$	Myriameter. Kilometer. Hectometer. Dekameter. METER. Decimeter. Centimeter. Millimeter.	Hectare. ARE. Centare.	Kiloliter, or stere. Hectoliter. Dekaliter. LITER. Deciliter. Centiliter. Milliliter.	Millier, or tonneau. Quintal. Myriagram. Kilogram, or kilo. Hectogram. Dekagram. GRAM. Decigram. Centigram. Milligram.

Scale representing a portion of the meter divided into centimeters and millimeters, together with a six-inch scale divided into eighths of an inch; one inch contains 25.4 millimeters.



The nomenclature, simple as it is in theory, and designed from its origin to be universal, can only become familiar by use. Like all strange words, these will become familiar by custom, and obtain popular abbreviations. A system which has incorporated with itself so many different series of weights, and such a nomenclature as "scruples," "pennyweights," "avoirdupois," and with no invariable component word, can hardly protest against a nomenclature whose leading characteristic is a short component word, with a prefix signifying number. We are already familiar with *thermometer*, *barometer*, *diameter*, *gasometer*, &c., with *telegram*, *monogram*, &c.—words formed in the same manner.

After considering every argument for a change of nomenclature, your committee have come to the conclusion that any attempt to conform it to that in present use would lead to confusion of weights and measures; would violate the easily-learned order and simplicity of metric denomination, and would seriously interfere with that universality of system so essential to international and commercial convenience.

When it is remembered that of the value of our exports and imports in the year ending June 30, 1860, in all \$762,000,000, the amount of near \$700,000,000 was with nations and their dependencies that have now authorized, or taken the preliminary steps to authorize, the metric system, even denominational uniformity for the use of accountants in such vast transactions assumes an important significance. In words of such universal employment each word should represent the identical thing intended, and no other, and the law of association familiarizes it.

Table of the commerce of the United States for the year ending June 30, 1860, exhibiting the value of the exports to and imports from each foreign country (including its colonies) in which the metric system is entirely or partially adopted or is in process of adoption; and also the exports to and imports from all other nations.

METRIC NATIONS.				NON-METRIC NATIONS.			
Countries.	Exports.	Imports.		Countries.	Exports.	Imports.	
Sweden, Norway, and Swedish West Indies	\$1,516,345	\$532,984		Russia and possessions	\$2,833,325	\$1,557,868	
Hamburg, Bremen, and other German ports	18,427,958	18,498,607		Prussia . . . . .	.....	36,464	
Holland and Dutch colonies	4,867,738	4,501,306		Ionian republic . . . . .	.....	62,897	
Belgium	4,559,748	2,558,873		Denmark and Danish West Indies	1,328,548	216,925	
Great Britain and colonies	238,887,117	177,913,585		Turkey	849,768	970,250	
France and colonies	63,050,187	43,409,627		Egypt	36,420	71,709	
Spain and colonies	21,165,794	44,492,314		African ports	2,370,543	1,755,916	
Portugal and colonies	402,303	266,440		Hayti	2,673,682	2,062,723	
Italy	5,073,375	4,734,518		San Domingo	169,300	283,098	
Austria	1,038,904	732,645		Uruguay	789,358	908,750	
Greece . . . . .	.....	71,754		Peru	987,672	308,452	
Mexico	5,354,073	6,935,872		Sandwich Islands	747,462	367,859	
Central America	149,698	331,258		Other Pacific islands	65,274	112,401	
New Granada	1,795,499	3,843,568		Japan	138,774	55,091	
Venezuela	1,147,900	2,883,464		China	8,906,118	13,566,587	
Brazil	6,280,255	21,214,803		Other ports in Asia	108,969	49,634	
Argentine republic	999,708	4,020,848					
Chili	3,268,673	2,072,912		Total	22,005,213	22,386,624	
Equador	19,545	.....		Whale fisheries and unknown	112,263	764,252	
Total	378,004,820	339,015,378					

Your committee unanimously recommend the passage of the bills and joint resolutions appended to this report. They were not prepared to go, at this time, beyond this stage of progress in the proposed reform. The metric system is already used in some arts and trades in this country, and is especially adapted to the wants of others. Some of its measures are already manufactured at Bangor, in Maine, to meet an existing demand at home and abroad. The manufacturers of the well-known Fairbanks scales state: "For many years we have had a large export demand for our scales with French weights, and the demand and sale is constantly increasing." Its minute and exact divisions specially adapt it to the use of chemists, apothecaries, the finer operations of the artisan, and to all scientific objects. It has always been and is now used in the United States coast survey. Yet in some of the States, owing to the phraseology of their laws, it would be a direct violation of them to use it in the business transactions of the community. It is therefore very important to legalize its use, and give to the people, or that portion of them desiring it, the opportunity for its legal employment, while the knowledge of its characteristics will be thus diffused among men. Chambers of commerce, boards of trade, manufacturing associations, and other voluntary societies, and individuals, will be induced to consider and in their discretion to adopt its use. The interests of trade among a people so quick as ours to receive and adopt a useful novelty, will soon acquaint practical men with its convenience. When this is attained—a period, it is hoped, not distant—a further act of Congress can fix the date for its exclusive adoption as a legal system. At an earlier period it may be safely introduced into all public offices, and for government service.

In the schedule of equivalents provided in the bill, extreme scientific accuracy is not expressed. The reasons follow. The exact length of the meter in inches and the weight of the kilogram in grains can of necessity be determined only approximately. The most careful determinations of these quantities now possible are liable to minute corrections hereafter, as more numerous observations are made and better instruments are used. Instead, therefore, of aiming at an accuracy greater, perhaps, than is attainable, it is more expedient to consult the convenience of the people by using the simplest numbers possible in the schedule, and yet such as shall be in fact more nearly exact than can ever be demanded in the ordinary business of life. These numbers are to be used in schools, and in practical life millions of times as multipliers and divisors, and every unnecessary additional figure is justly objectionable.

In a popular sense of the word, however, the numbers in the schedule may be said to be exact. The length of the meter, for example, is given as 39.37 inches. The mean of the best English and the best American determinations differs from this only by about the amount by which the standard bar changes its length by a change of one degree of temperature. Such accuracy is certainly sufficient for legal purposes and for popular use.

The second measure recommended is a joint resolution, necessarily following the adoption of the leading bill, and provides for furnishing the standards which will thereby be required, to the several States.

The third proposition is a bill to authorize and provide for the use of the weight of 15 grams in the post office, in conformity with the system adopted by that department for foreign correspondence.

The fourth is a resolution looking to effective negotiation for a uniform coinage among nations.

Respectfully submitted,

JOHN A. KASSON, *Chairman*.
CHARLES H. WINFIELD.
THOMAS WILLIAMS.
HEZEKIAH S. BUNDY.
HENRY L. DAWES.

BILLS AND RESOLUTIONS ACCOMPANYING THE REPORT.

A BILL to authorize the use of the metric system of weights and measures.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, it shall be lawful throughout the United States of America to employ the weights and measures of the metric system; and no contract, or dealing, or pleading in any court, shall be deemed invalid, or liable to objection, because the weights or measures expressed or referred to therein are weights or measures of the metric system.

SEC. 2. *And be it further enacted,* That the tables in the schedule hereto annexed shall be recognized, in the construction of contracts, and in all legal proceedings, as establishing, in terms of the weights and measures now in use in the United States, the equivalents of the weights and measures expressed therein in terms of the metric system; and said tables may be lawfully used for computing, determining, and expressing in customary weights and measures the weights and measures of the metric system.

Measures of length.

METRIC DENOMINATIONS AND VALUES.		EQUIVALENTS IN DENOMINATIONS IN USE.
Myriameter.....	10,000 meters	6 2137 miles.
Kilometer.....	1,000 meters	0.62137 mile, or 3,280 feet and 10 inches.
Hectometer.....	100 meters	328 feet and one inch.
Dekameter.....	10 meters	393.7 inches.
Meter.....	1 meter	39.37 inches.
Decimeter.....	$\frac{1}{10}$ th of a meter	3.937 inches.
Centimeter.....	$\frac{1}{100}$ th of a meter	0.3937 inch.
Millimeter.....	$\frac{1}{1000}$ th of a meter	0.0394 inch.

Measures of surface.

METRIC DENOMINATIONS AND VALUES.		EQUIVALENTS IN DENOMINATIONS IN USE.
Hectare.....	10,000 square meters	2.471 acres.
Are.....	100 square meters	119.6 square yards.
Centare.....	1 square meter	1,550 square inches.

Measures of capacity.

METRIC DENOMINATIONS AND VALUES.			EQUIVALENTS IN DENOMINATIONS IN USE.	
Names.	No. of liters.	Cubic measure.	Dry measure.	Liquid or wine measure.
Kiloliter or stere	1000	1 cubic meter.....	1.308 cubic yards...	264.17 gallons.
Hectoliter.....	100	$\frac{1}{10}$ of a cubic meter....	2 bus. and 3.35 pecks	26.417 gallons.
Dekaliter.....	10	10 cubic decimeters...	9.08 quart.....	2.6417 gallons.
Liter.....	1	1 cubic decimeter.....	0.908 quarts.....	1.0567 quarts.
Deciliter.....	$\frac{1}{10}$	$\frac{1}{10}$ of a cubic decimeter	6.1022 cubic inches.	0.845 gill.
Centiliter.....	$\frac{1}{100}$	10 cubic centimeters...	0.6102 cubic inch...	0.338 fluid ounce.
Milliliter.....	$\frac{1}{1000}$	1 cubic centimeters....	0.061 cubic inch....	0.27 fluid drachm.

Weights.

METRIC DENOMINATIONS AND VALUES.			EQUIVALENTS IN DENOMINATIONS IN USE.
Names.	Number of grams.	Weight of what quantity of water at maximum density.	Avoirdupois weight.
Millier or tonneau..	1000000	1 cubic meter	2204. 6 pounds.
Quintal	100000	1 hectoliter	220. 46 pounds.
Myriagram	10000	10 liters	22. 046 pounds.
Kilogram or kilo...	1000	1 liter.....	2. 2046 pounds.
Hectogram	100	1 deciliter	3. 5274 ounces.
Dekagram	10	10 cubic centimeters.....	0. 3527 ounce.
Gram.....	1	1 cubic centimeters.....	15. 432 grains.
Decigram	$\frac{1}{10}$	$\frac{1}{10}$ of a cubic centimeter.....	1. 5432 grains.
Centigram	$\frac{1}{100}$	10 cubic millimeters	0. 1543 grain.
Milligram	$\frac{1}{1000}$	1 cubic millimeter.....	0. 0154 grain.

JOINT RESOLUTION to enable the Secretary of the Treasury to furnish to each State one set of the standard weights and measures of the metric system.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to furnish to each State, to be delivered to the governor thereof, one set of the standard weights and measures of the metric system, for the use of the States respectively.

A BILL to authorize the use in post offices of weights of the denomination of grams.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General be, and he is hereby, authorized and directed to furnish to the post offices exchanging mails with foreign countries, and to such other offices as he shall think expedient, postal balances denominated in grams of the metric system, and until otherwise provided by law, one-half ounce avoirdupois shall be deemed and taken for postal purposes as the equivalent of fifteen grams of the metric weights, and so adopted in progression; and the rates of postage shall be applied accordingly.

JOINT RESOLUTION to authorize the President to appoint a special commissioner to facilitate the adoption of an uniform coinage between the United States and foreign countries.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to appoint a special commissioner to negotiate with foreign governments for the establishment of the common unit of money, of identical value in all commercial countries adopting the same; that all governments with which the United States hold diplomatic relations be invited to participate in the negotiations. That any plan which may be agreed upon by part of or all the representatives engaging in such negotiations be submitted to Congress for its approval before being carried into effect in the United States, and that the compensation allowed to such commissioner be the amount necessary for his actual and proper expenses incurred in the execution of his duties.

REAR-ADMIRAL PAULDING.

[To accompany H. R. No. 457.]

MAY 29, 1866.—Ordered to be printed.

Mr DODGE, from the Committee on Foreign Affairs, made the following

REPORT.

House bill No. 457, entitled "An act for the relief of Hiram Paulding, rear-admiral United States navy," having been referred, April 5, 1866, to the Committee on Foreign Affairs, your committee beg respectfully to report :

In 1848, during the French revolution, Captain Hiram Paulding was ordered by the Navy Department to take command of the new frigate St. Lawrence and proceed to Europe on *special service*.

During the political difficulties then existing on the continent it was the wish of the United States government that friendly relations should be maintained between itself and foreign countries, and Captain Paulding was instructed to so conduct his command as to promote the kindly feelings that existed between this country and Great Britain and Germany.

Upon his arrival in England he was received by the authorities, every mark of respect was shown the American flag, and the most friendly hospitality extended to Captain Paulding and his officers. He could not disregard the generous sympathy expressed towards his flag, and he responded to the civilities of the authorities in a befitting manner. The ship then proceeded up the channel to the North sea, to Bremerhaven, Stockholm, and other ports. At each of these places the same cordial feeling met him.

The vessel was visited by the royalty and nobility of those countries, among them the Queen of Greece, the Archduke of Oldenburg, and his royal family, Prince Stephen of Austria, the Baron Von Gagern, late president of the imperial parliament of Frankfort, Duckwitz, minister of the German marine, deputations from the Prussian government, and many of the most distinguished persons of Germany.

These were received by Captain Paulding in a manner suitable to their rank, and calculated to reflect credit on the United States. Expense was thus necessarily incurred. It was the first occasion of any of our vessels-of-war visiting these countries under like circumstances, and Captain Paulding felt it incumbent on him to respond to the attention everywhere shown him as a representative of the United States.

He acted under the conviction that the government would recognize the manner in which he had conducted his command, and approve his course in responding to the civilities extended to him.

The money expended by him amounted to \$3,653 92—a sum too large for a poor officer who has very little outside of his pay.

It certainly was not expended for his own personal benefit, but entirely on behalf of his government. The claim was recognized by the Senate and passed that body three different times. It never reached the House, however, the same session.

During the late war Admiral Paulding was too much engaged with his official duties to present his claim, and from motives of delicacy, also, refrained from calling on Congress while the country was in trouble.

He commanded for three years the naval station at New York, and fitted out and sent to sea most of the ships which so gallantly sustained the credit of the navy. With a soul filled with patriotism and loyalty, he labored faithfully, early and late, to suppress the rebellion.

Having served the government nearly 55 years, receiving a compensation universally admitted to be inadequate, and feeling the weight of years, he deems it but just to his large family to make another appeal to Congress to pay him this money, as the expenses incurred while carrying out his instructions, he thinks, should not be visited upon him.

The claim is an honest and just one, and found to be so after an investigation by several different committees.

The committee call attention to the following extract from the report of the Senate committee, April 16, 1852 :

"Of the obligations of the government to pay the amount just stated your committee do not entertain a doubt. No commander of a public vessel abroad is at liberty, unless under peculiar circumstances, to decline such visits as were made to the *St. Lawrence* by the sovereign authorities of countries with which it is our interest to cultivate amicable relations. The interchange of such civilities exercises a decided and beneficial influence, while, at the same time, the naval preparation and efficiency of our country is most wisely and humanely displayed ; and, for the payment of this sum, your committee refer to the action of Congress in similar cases.

"(See naval appropriation act of February 20, 1833, section 5, allowance to Master Commandant John D. Sloat, \$1,360 ; civil and diplomatic appropriation act of March 2, 1833, allowance to Captain Daniel Turner of \$1,182 78, and to Captain George W. Storer, \$500 ; act of July 7, 1838, for the relief of Captain Daniel T. Patterson, allowing him \$3,391 ; and act of June 17, 1844, for the relief of Captain Charles W. Morgan, allowing him \$4,200.)"

The committee refer to the letter of instructions to Captain Paulding hereto annexed.

Your committee would respectfully recommend the adoption of the aforesaid bill.

NAVY DEPARTMENT,

August 26, 1848.

SIR: So soon as the United States frigate *St. Lawrence*, under your command, is, in all respects, ready for sea, you will proceed to the North sea, touching at Southampton, if necessary for refreshment of the crew, or supplies of provisions.

I regret that the season is so far advanced that it is not probable that it will be practicable for you to enter the Baltic sea and render any valuable service during the present year before the navigation will be obstructed or closed by ice.

You will touch at Bremerhaven, and communicate your arrival to the American minister at Berlin. You will extend your cruise as much further north as in your judgment the public interests may require and the state of the navigation may permit.

If there is a state of war it will be your duty to give due protection to American citizens and their property, and to this end you will visit any commercial points of importance which may be blockaded. In your intercourse with the

belligerents you will bear in mind that it is the policy of the United States to observe a strict neutrality in regard to nations at war which are in amity with us.

As the season advances you will proceed to the south of Europe and touch at such points between Cape Finisterre and Cadiz at which, in your judgment, your presence may be most advantageous to the interests of American commerce.

At Lisbon you will communicate with the chargé d'affaires to Portugal, and, informing him of your instructions, receive from him suggestions as to the length of time you will remain in the Tagus. When the spring opens, you will return to the north and proceed as far as Cronstadt.

* You will consider yourself on detached special service until further orders from the department.

When at Bremen, if the Kingdom of Prussia is *not* engaged in war, you will receive on board and put to duty, as midshipmen, four young Prussian officers, who may be detailed for that purpose. You will inform Mr. Donelson of this part of your instructions, and through him the officers will be named to you. His excellency the Prussian minister at Washington has requested that this privilege may be extended, and it is cheerfully accorded, if not inconsistent with our neutrality, as well in acknowledgment of the distinguished compliment which it implies to our navy, as in our sincere desire to see the efforts of Prussia to make an effective naval establishment crowned with success.

You will be pleased to inform the department of the events of your cruise as often as practicable, and your communications should be regularly numbered, and duplicates forwarded by the earliest opportunities to be found after the originals shall have been transmitted.

With best wishes for a pleasant cruise, for the good health of yourself, officers and crew, and a safe return to your country and friends, I am, very respectfully, your obedient servant,

J. Y. MASON.

Captain HIRAM PAULDING,

Commanding United States Frigate St. Lawrence, Norfolk.

WILLIAM G. LEE.

[To accompany bill H. R. No. 629.]

MAY 29, 1866.—Ordered to be printed.

Mr. McKEE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of William G. Lee, having had the same under consideration, make the following report:

In the month of October, 1864, William G. Lee entered into a verbal contract with John A. Morris, captain and assistant quartermaster in the United States army, then on duty at Lexington, Kentucky, by which Lee was to obtain for and sell to the government a large amount of corn in the vicinity of Lexington, Kentucky. As soon as Mr. Lee had the corn in the fields he was to notify the quartermaster, who should then send for it and have it brought into the post. Under this contract Mr. Lee purchased from the farmers a large amount of corn, and, from time to time, notified the quartermaster as the corn was ready, and a considerable portion of it—some 28,000 bushels—was brought in and paid for, but the greater portion—about 30,000 bushels—which was contracted for and placed in the fields, and the quartermaster notified as agreed upon, was not brought in, but was left where Mr. Lee placed it until, by the inclemency of the weather and continued exposure, it perished and became worthless, and payment for it refused by the quartermaster.

Under these circumstances, on the 27th day of October, 1865, Mr. Lee made application to Colonel Howland, chief quartermaster for the department of Kentucky, for an adjustment of his claim. Colonel Howland referred the matter to Brevet Colonel Charles H. Irwin, assistant quartermaster and inspecting quartermaster, for his investigation. On the 4th of November, 1865, Colonel Irwin made the following report to Colonel Howland:

LOUISVILLE, KENTUCKY, November 4, 1864.

COLONEL: I have the honor to return to you the papers in relation to claim of William G. Lee, referred to me for investigation. I have not only investigated the papers, but have also seen at Lexington, Kentucky, all the parties who could be reached. I examined them in relation to their knowledge of the facts, and am satisfied that they have testified only as to what they know personally.

The affidavit of Joseph Thompson shows a loss of ten thousand (10,000) bushels of ear-corn, at \$1 per bushel, \$10,000; and sixteen hundred (1,600) sacks of shelled corn, which I know usually average one hundred and twenty (120) pounds per sack, one hundred and ninety-two thousand (192,000) pounds, or (3,428 $\frac{2}{3}$) three thousand four hundred and twenty-eight bushels and thirty-two fifty-sixths bushels, at (\$1 20) one dollar and twenty cents per bushel, (\$4,114 28) four thousand one hundred and fourteen dollars and twenty-eight cents; and shows, further, that this is independent of the affidavits of R. H. Davenport and Hyman C. Gratz, below referred to, which show a positive loss of twelve thousand (12,000) bushels of ear-corn, at one dollar (\$1) per bushel, twelve thousand (\$12,000)

dollars; and nine hundred (900) sacks of shelled corn, at one hundred and twenty (120) pounds per sack, one hundred and eight thousand (108,000) pounds; $(1,928\frac{3}{5}\frac{2}{6})$ one thousand nine hundred and twenty-eight and thirty-two fifty-sixths bushels, at (\$1 20) one dollar and twenty cents per bushel, (\$2,314 28) two thousand three hundred and fourteen dollars and twenty-eight cents. Amounting in all to (\$28,428 56) twenty-eight thousand four hundred and twenty-eight dollars and fifty-six cents.

In my opinion, this is not really a case of damage, but comes fully under the second section of act of July 24, 1864, referred to in general orders of August 29, 1864, Quartermaster General's office, as having been actually received for use of, "even if not used by said army." It seems from the affidavits that a contract was made to receive from said Lee (150,000) one hundred and fifty thousand bushels of corn at any point within (25) twenty-five miles of Lexington, Kentucky, without any stipulation as to whether in the field or elsewhere, and that transportation was to be furnished by the government to bring from any point within (25) twenty-five miles of Lexington, Kentucky, the corn; that the transportation was not furnished at the time it was asked; that at the time transportation was asked for the corn was in good condition; that owing to not supplying transportation the corn from natural causes became worthless, and, in my opinion, from the nature of the contract, I should deem the corn to have been delivered immediately the quartermaster's department was notified by Mr. Lee that it was ready for them to haul.

I don't know that that is strictly law, but it is equity; and if I had been the officer in charge, I should have paid for the corn, and have relieved myself from responsibility under the circumstances by the action of a board of survey and inspection. I cannot forbear, in this connexion, from saying that I think this system of verbal contracts, employing middle men to do the business of officers of the United States, (which this really in fact is,) is vicious in the extreme, as the quartermaster himself, by his agent, backed by the credit of the United States, can always buy from the producers as cheap, if not cheaper, than any speculator, and can save the profit that, of course, must accrue to the middle man.

I am unable to say in what manner this can now be paid; but I am satisfied that the claim to the amount I have set down, viz: twenty-eight thousand four hundred and twenty-eight dollars and fifty-six cents, (\$28,428 56,) is just, and I would recommend that it be submitted, with all the papers, to the Quartermaster General for his action, and that his attention be particularly called to the leading points in the case.

I am, colonel, very respectfully, your obedient servant,

CHARLES H. IRWIN,

*Brevet Colonel and Assistant Quartermaster, Inspecting
Quartermaster, Military Division, Tennessee.*

Colonel HENRY HOWLAND,

Chief Quartermaster, Department of Kentucky.

On the 7th of November, 1865, Colonel Howland forwarded the papers to the Quartermaster General, with the following indorsement:

HEADQUARTERS DEPARTMENT OF KENTUCKY,

Office of Chief Quartermaster, Louisville, Ky., November 7, 1865.

Respectfully forwarded to the Quartermaster General. Attention invited to the enclosed report of Brevet Colonel Charles H. Irwin, assistant quartermaster and inspecting quartermaster. I should also remark that while, in my opinion, the system of *verbal contracts*, which seems to have been so generally adopted in this department, cannot be too strongly condemned, I still believe that in the present instance the contract herein referred to was entered into and carried

out in good faith on the part of Mr. Lee, and from my personal knowledge I know that he lost all his property and has been beggared, in consequence of the non-fulfilment of the contract on the part of the government. I believe Mr. Lee's claim a just one, and that it should be paid by the government.

HENRY HOWLAND,

Colonel and Chief Quartermaster, Department of Kentucky.

The papers forwarded to the Quartermaster General were indorsed as follows by General S. G. Burbridge :

LEXINGTON, *October 7, 1865.*

This is to certify that I was in command of the military district of Kentucky, in the fall and winter of 1864 and 1865, and knew of a contract for corn, made by Captain J. A. Morris, assistant quartermaster, and Mr. Lee. That in the spring of 1865 I relieved Captain J. A. Morris, assistant quartermaster, from duty, and Captain D. W. C. Day, assistant quartermaster, was ordered to take charge of the transportation and the purchase of forage at this post. Captain Day, assistant quartermaster, informed me that he was to carry out the verbal contracts made by Captain Morris, assistant quartermaster. In this department most all contracts for forage were verbal, and considered as binding as written ones. That there was a large amount of transportation at this post. I knew Mr. Lee purchased a large amount of corn ; that for some reason the quartermasters did not furnish transportation as agreed. Mr. Lee came to me in regard to transportation ; that I inquired into it, but could not find out anything, unless it was the want of inclination. I also know that Mr. Lee lost heavily, from corn rotting in the fields and his cribs, for the reason that the quartermaster did not furnish transportation as agreed, and, from my own knowledge and from the reports of his agents, would most earnestly recommend that he should be paid the amount he asks, and think it a reasonable compensation for his losses ; and I would further say, the parties who have made affidavit in regard to this case are men of standing and whose reputation for truth and veracity is beyond dispute.

S. G. BURBRIDGE,

Brevet Major General U. S. Vols.

The following indorsement by John B. Campbell, captain and assistant quartermaster :

OFFICE OF ASSISTANT QUARTERMASTER,

Lexington, Kentucky, October 19, 1865.

This is to certify that I have examined into the claim of Mr. W. G. Lee, and consider it a just one, and would most earnestly recommend its payment, and would further say, that it is and has been the custom at this post to make verbal contracts for forage ; also that the parties who have made affidavits in this case are worthy and reliable gentlemen.

JOHN B. CAMPBELL,

Captain and Assistant Quartermaster.

Also indorsement of E. H. Hobson, late brigadier general of volunteers, as follows :

LOUISVILLE, KY., *October 27, 1865.*

This is to certify that I was in command of the first division district of Kentucky from December 30, 1864, to August 27, 1865, with headquarters at Lexington, Kentucky, and am satisfied and know that there was an excess of wagon transportation in charge of the post quartermaster at Lexington. Between the above dates there were three hundred and seventy-five army wagons and other conveyances at Lexington, Kentucky, subject to the quartermaster's orders.

E. H. HOBSON,

Late Brigadier General Volunteers.

The evidence presented to the committee is briefly as follows :

1. The affidavit of the claimant, William G. Lee, showing that in the month of October, 1865, he made a verbal contract with Captain John A. Morris, post quartermaster at Lexington, Kentucky, to furnish the government 150,000 bushels of corn, at one dollar for ear-corn, and one dollar and twenty cents for shelled corn, to be furnished at any point within twenty-five miles of Lexington; that when Morris should be notified that the corn was ready he should send the transportation; that claimant procured the corn and notified the quartermaster, but that transportation was not furnished as agreed upon; that in February last Captain Morris was succeeded by Captain D. W. H. Day, who renewed and ratified the contract made with Captain Morris; that Captain Day was also notified from time to time that the corn was ready, and was requested to send transportation for the same, which he failed to do; that by reason of such neglect and failure a large amount of the corn was spoiled and became worthless; that the loss therefrom was about \$30,000.

2. Affidavit of John S. McGrew :

Shows that he knew Lee and Captain Morris intimately; was acting medical director of the district at the time; that Morris contracted with Lee for 150,000 bushels of corn at one dollar for ear-corn and one dollar and twenty cents for shelled corn, the government to furnish all the necessary transportation; that before the contract was filled, Morris was succeeded by Captain Day, who reaffirmed the contract; knows that Lee furnished the corn and had it ready in the fields, and repeatedly notified Captain Day that it was ready; that at Lee's request affiant repeatedly notified Day that the corn was ready, and Day promised to send the transportation; that Day had the transportation, and could have sent it if he had desired to do so, but did not send it; that by reason of such neglect the corn was spoiled. The season was extremely wet and inclement. Affiant knew of a lot of 11,000 bushels from which Lee saved 2,800 bushels at an expense of \$1,000, and that other lots suffered in the same proportion; that the loss accrued by the failure of the quartermaster to comply with the agreement; and that, from an intimate knowledge of the transaction, he thinks that the amount claimed by Lee to be a fair and just compensation, and that Lee has always been loyal.

3. Affidavit of A. J. Walrath :

That he was employed by Lee; that Lee contracted for large amounts of corn in Fayette and adjoining counties; that Lee used every effort to get transportation from the quartermaster, but could not get it; that the corn purchased by Lee was good and merchantable; that if it had been removed when Lee notified the quartermaster to do so it would not have been spoiled; that the amount so spoiled and rotted was 30,000 bushels.

4. Affidavit of R. H. Davenport and Hyman C. Gratz :

That they were employed by Lee to purchase corn, and bought about 40,000 bushels; transportation was not furnished, and large lots spoiled in the fields; other lots were cribbed and covered over and lay so long that they became a total loss; that they used every exertion to preserve the corn. In their opinion 12,000 bushels of ear and 900 sacks of shelled corn spoiled at Midway, Woodford county, Kentucky. At the time the corn was purchased it was sound and merchantable; and if transportation had been furnished as agreed, none of it would have spoiled.

5. Affidavit of Joseph Thompson :

Shows that at said time he had charge of transportation of T. D. Fitch, a quartermaster at Lexington, Kentucky. Knows that Lee used every exertion

to get the transportation. Knows that when Day relieved Morris that transportation was greatly increased, and that Day had plenty of it. Knew of a lot of about 10,000 bushels ear-corn and 1,600 sacks shelled corn bought by Lee, which rotted for want of transportation; also of other smaller lots.

Supplementary affidavit of said Thompson: That the 10,000 bushels and 1,600 sacks of corn above mentioned as having spoiled, is not the same lot as that mentioned in the affidavit of R. H. Davenport and Hyman C. Gratz.

6. Affidavit of William R. Jackson, late captain and acting assistant quartermaster:

Was on duty at Nicholasville, Kentucky, in winter of 1864 and '65. Was advised by Morris that he had made a contract with Lee for forage—after Day relieved Morris. Met Lee in Day's office and heard him make serious complaints that corn was spoiling because transportation was not furnished as agreed. Affiant's opinion that there was sufficient transportation to secure all corn purchased if it had been properly used.

7. Affidavit of George C. Newberry:

Affiant lived at Lexington, Kentucky, and knew from statements of Morris that Lee had a large corn contract with him in fall and winter of 1864. Knew that Lee used every exertion to obtain transportation, and that he lost largely by corn rotting for want of transportation.

8. Affidavit of E. J. Carley:

Same as the above; and further, that affiant knew that Captain Day furnished transportation to other contractors with Morris.

9. Affidavit of G. Collins Lyon:

Was employed as clerk in the office of Morris at the time; frequently heard Morris speak of the contract with Lee; heard frequent conversations between Lee and Morris about transportation; has heard Lee complain to Morris bitterly about the want of it, and has heard Morris promise it to Lee; believes that great loss was suffered for want of transportation.

10. Certificate of D. W. H. Day, captain and assistant quartermaster:

That he has known Lee since October, 1864, and has always considered him an honorable gentleman; from what he knows of his business is satisfied that he suffered great loss from corn spoiling on his hands for the reason that the government could not furnish transportation for it at the time it should have been hauled; is also satisfied that his predecessor led Lee to expect government transportation, which afterwards could not be supplied.

11. Affidavit of Fred. A. Lyon:

Was a clerk in Day's office at Lexington; knew that Lee had a contract with Morris for furnishing corn to quartermaster's department; also that Day agreed with Lee to carry out the contract in all its terms. Knows that Day had a large amount of transportation and was continually called upon for it by Lee, and promised to furnish it. Seldom did so, and then reluctantly. Knows that Lee had large lots of corn spoiled on his hands for want of transportation; from his own knowledge and what he has heard from others, estimates Lee's loss to be at least \$30,000.

12. Certificates of C. D. Carr, presiding judge of the Fayette county court, and W. C. Goodloe, judge of the thirteenth judicial district, Kentucky:

Certify that they know the following witnesses, and that they are creditable, reputable gentlemen and worthy of belief, to wit: W. G. Lee, John S. McGrew, R. H. Davenport, Hyman Gratz, E. J. Carley, Geo. C. Newberry, D. W. H. Day, Joseph Thompson, A. J. Walrath, and G. C. Lyon.

13. Affidavit of W. H. Rodgers :

Was employed in quartermaster's department at Lexington, and knew about transportation at the time. It consisted of 320 teams in good condition.

14. Certificate of E. B. W. Restieaux, captain and assistant quartermaster at Camp Nelson, Kentucky :

Was informed by Morris that Lee had verbal contract with him ; that such contracts were customary in that department, and considered best for the government ; that Lee had a large amount of corn in cribs near Lexington and applied to affiant to haul it, because he could not obtain transportation from Lexington.

15. Affidavit of John S. Davis, late captain and assistant quartermaster :

Was on duty at Lexington at the time. Understood that Lee had a verbal contract for furnishing corn to the quartermaster's department, to be delivered in the field. There was sufficient transportation at the place for the government to have fulfilled the contract ; that it was the custom to give verbal contracts ; that Lee was a loyal man, and worthy any contract the government might give.

16. Affidavit of Joseph P. Santmyer, late captain and assistant quartermaster :

Lee applied to him to haul corn. Investigated the matter, and found that Lee had bought the corn in good faith and paid for it. Day could have furnished transportation if he had done his duty. Is satisfied that Lee's claim is a just one, and that the loss occurred by the fault of the government officers.

17. Affidavit of W. L. Neale, late assistant quartermaster :

Was on duty in Kentucky at the time ; knew of Lee's contract ; that Lee made frequent applications for transportation to officer in charge ; that it was frequently promised, but not furnished ; that the corn spoiled on Lee's hands ; knew it to be the custom to make verbal contracts for forage ; that Lee is loyal ; that his claim is just and equitable, and that he has been ruined by the non-fulfilment of this contract.

18. Certificate of secretary of state as to official character of officers before whom affidavits were taken.

23. Affidavit of John A. Morris :

Was on duty at Lexington, Kentucky, as quartermaster first division military district of Kentucky ; received order from General Allen, assistant quartermaster general, division of the west, to purchase in open market all corn, &c., to be obtained near Lexington ; to furnish to any parties who would furnish forage the necessary transportation ; made arrangements with active men to scour the country within twenty-five miles of Lexington to urge the farmers to harvest their corn and turn it over to the government ; farmers were distrustful and refused to sell to the government ; then made arrangements with these men to buy the corn on their own responsibility, and affiant agreed, on behalf of the government, to furnish each man with a train of twenty-five wagons to bring the forage to Lexington to be inspected and weighed by the government before paying for the same ; Lee was one of these parties ; authorized Lee to purchase as much corn as he could deliver with twenty-five wagons from November 1, 1864, to April 1, 1865 ; furnished the teams as agreed ; found Lee untiring in his zeal to fill the contract ; believes that he purchased and bound himself to pay for the whole amount of corn, and that his losses were equal to the amount claimed by him ; that these losses occurred from the following circumstances :

During the winter of 1864-'65 requisitions were made for transportation, which

required affiant to take away the teams engaged in hauling forage, causing great loss and inconvenience to contractors.

In February, 1865, was relieved from duty by Captain Day; requested Day to carry out the contract, which he agreed to do.

"I consider that a notification and request of the parties mentioned above, handed either to Captain Day or myself, a sufficient proof that the supplies were so purchased, thereby becoming the property of the government. It was part and parcel of the agreement that the transportation should be furnished as above. If it had been so furnished I believe W. G. Lee would have readily delivered all the corn, and more, claimed in the report of Colonel Irwin, inspecting quartermaster, military district Tennessee."

26. Communication from Brevet Brigadier General L. L. Bowen, disallowing the claim, because Lee did not procure private transportation and was guilty of negligence in not adopting precautions to preserve the grain from spoiling, and because the claim is a just one; presents a case of damages only of which Congress has exclusive jurisdiction.

27. Second affidavit of John A. Morris: That it was absolutely impossible, at the time referred to, for Lee or any one else to obtain private transportation, because all the horses and mules were taken up by the government for its service; that after Lee notified affiant that corn was ready he did, at the suggestion of affiant, place a large portion of it in bins, and in every way that was practicable endeavor to save it; that it was extremely difficult to obtain men, because they were nearly all in government service; that the weather was very inclement, and, according to affiant's experience, that which was placed in bins and protected received nearly the same injury as that left unprotected; that Lee used every effort in his power to preserve the corn.

28. Second affidavit of John S. McGrew, medical director, &c.: Was present during the whole of the time that the verbal contract between Morris and Lee was being made; gives, as far as he can recollect, the exact language used.

The precise language used by Morris with regard to the delivery was: "I will give you this for corn delivered in the fields or in cribs, wherever you may have to buy it, and I will furnish the transportation." That, apart from his recollection of the precise language used, the result of the talk was that Lee should have the corn shucked and thrown into piles in the field, and Morris, upon being notified, would haul it away.

Appended to this is the affidavit of Captain John A. Morris that McGrew's account of the verbal contract is correct, unless it be as to prices, about which he can't positively recollect. That McGrew was present during the whole of the time contract was being made.

The evidence in this case shows that the government, through its officers, failed to carry out and fulfil the contract made by Captain Morris with the claimant Lee, who, acting as an agent of the government, paid out his own money to secure forage for the government, and that the loss which has occurred was through no fault of his.

Your committee therefore recommend that there be paid to William G. Lee the amount reported by Colonel Charles H. Irwin, inspecting quartermaster for the military division of Tennessee, to wit: \$28,428 50—twenty-eight thousand four hundred and twenty-eight dollars and fifty-six cents—and report a bill for the payment of the same.

CUSTOM-HOUSE AT BANGOR.

MAY 29, 1866.—Ordered to be printed and recommitted to the Committee on Commerce.

Mr. J. M. HUMPHREY, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the memorial of the city council of Bangor, Maine, praying for an appropriation for the enlargement and repair of the custom-house and post office department at that place, report:

That they have had the matter under consideration, and, submitting the accompanying papers as a part of this report, would recommend an appropriation of thirty-five thousand dollars to carry out the proposed objects.

ROOM OF COMMITTEE ON COMMERCE,
House of Representatives.

SIR: I herewith enclose a memorial from the city council of Bangor, Maine, relative to improvement of the custom-house at that place, and would request your views as to the propriety of an appropriation, in the present state of the finances, for the purposes mentioned.

Very respectfully,

E. B. WASHBURNE, M. C.

Hon. H. McCULLOCH,
Secretary of the Treasury.

CITY OF BANGOR, IN CITY COUNCIL,
November 6, 1865.

Resolved, That the following memorial to Congress, with the accompanying plans, be, and the same are, hereby adopted as the sense of the city council of the city of Bangor; and the representative from this congressional district is requested to present the same to, and urge the adoption by, Congress at its approaching session, of measures necessary to carry into effect the prayer of said memorial.

IN BOARD OF ALDERMEN, November 6, 1865.

Adopted unanimously; sent down for concurrence.

SAMUEL H. DALE, Mayor.

IN COMMON COUNCIL, November 6, 1865.

Adopted unanimously, in concurrence.

NATHAN L. PERKINS, President.

*To the honorable the Senate and House of Representatives of the United States
in Congress assembled :*

The memorial of the city council of Bangor, in the county of Penobscot and State of Maine, respectfully represents: That the building of the United States, in this city, which is occupied as a custom-house, post office, and by the United States district court, is too limited in its accommodations for the purposes for which it was intended, and that there are no government rooms in this district for the internal revenue suitable for that department; that the post office accommodations are contracted and extremely inconvenient for the citizens, a portion of whom are obliged to stand out of doors during the distribution of the mails; that the court-room is low, small, dark, and may properly be termed mean, taking into view the purpose for which it was designed; that a plan prepared by a United States engineer (the supervising architect) has been exhibited to your memorialists, which, in their opinion, contemplates such improvements in the present government building as will render it very convenient for all the government purposes above mentioned. They therefore pray that Congress will make provision for enlarging the present custom house in Bangor, and arranging it agreeably to said plan.

And, as in duty bound, will ever pray.

GEO. W. SNOW, *City Clerk.*

A true copy of record.

Attest :

GEO. W. SNOW, *City Clerk.*

TREASURY DEPARTMENT, OFFICE OF SUPERVISING ARCHITECT,
February 23, 1866.

SIR : I have visited Bangor, Maine, and examined the custom-house building in that city as directed by your letter of the 29th ultimo, and have the honor to report as follows :

I found the building small, inconvenient, and badly arranged. The ground-floor, which is assigned to the post office department, is not only too small, but constructed without regard to the wants of the officers and the public. I consider increased accommodations an absolute necessity.

The second or custom-house story is ample for all the business of the port, and is, in fact, the only portion of the building that is at all adapted for the purpose for which it is designed. It is clean and in good repair, but the stairs by which it is approached are extremely inconvenient and even dangerous, and should the improvements be made, must be reconstructed.

The building is two stories and a half in height, the upper or attic story being devoted to the judiciary, and contains what is termed a court-room, though a more ill-contrived, inconvenient, and unfit building it would be difficult to imagine. The top of the windows is but four feet from the floor, and the room has no other means of ventilation; from which statements, some idea can be formed of its fitness for the purpose. In fact, the court-room exists but in name, and is only used in cases of great emergency that cannot be transferred to Portland, and on such occasions as the judge cannot obtain the use of the county court-room. I therefore strongly recommend that suitable accommodations be provided.

I have also fully examined into the feasibility of extending the present building, and can see no objections to such a course. It would be not only more economical and more satisfactory to the citizens, but in all respects more advantageous. I have therefore prepared plans for an extension of the building

with a view to furnish suitable accommodations for the post office, United States courts and judiciary, and the officers of the internal revenue, the estimated cost of which is \$35,000, which I believe will furnish the desired accommodations in the most economical and satisfactory manner, and which are herewith submitted for your approval.

Very respectfully,

A. B. MULLETT,
Assistant Supervising Architect.

Hon. HUGH McCULLOCH,
Secretary of the Treasury.

TREASURY DEPARTMENT, *March 2, 1866.*

SIR: Upon the receipt of your letter enclosing the memorial of the city council of Bangor, Maine, requesting an extension of the custom-house at that place, I caused the proper investigations to be made, and believe, after a careful examination of the case, that the public interests demand the extension asked for. I therefore recommend that an appropriation of \$35,000 be granted for that purpose.

Enclosed please find copies of the papers in relation to the case, and of the report of the architect of this department.

Very respectfully,

H. McCULLOCH,
Secretary of the Treasury.

Hon. E. B. WASHBURNE,
*Chairman Committee on Commerce,
House of Representatives.*

OFFICE OF THE UNITED STATES ATTORNEY,
District of Maine, Portland,

I have the honor to represent that the room over the custom-house at Bangor, used as a court-room for the United States district court, is scandalously inconvenient and unfit for such purpose. It is too small for the accommodation of the officers of the court, to say nothing of the public. It is low, unventilated, and, from faults of construction, incapable of ventilation. Citizens of Bangor who have happened into the room while court was in session, and seen the judge, officers and jurors *sweltering* and *panting* in the hot weather of July, have begged, for the honor of their city, that we would accept the use of the county court building, which it has not often been in our power to do, because the State court was sitting simultaneously. The only light admitted to any of the rooms upon the upper story is by a few low windows close to the floor, and hard up (externally) under the eaves of the building. There has not been a year, since I have been in office, that I have not strained and injured my eyesight by the considerable amount of writing of minutes of testimony and indictments that I have been required to do in the United States court-room and the adjoining ante-rooms. In my opinion, the building at Bangor should be remodelled, so as to give wider, higher, better ventilated, and better lighted rooms for the accommodation of the United States court.

GEORGE F. TALBOT,
Attorney of the United States, for Maine District.

DISTRICT OF MAINE :

We concur fully with the opinion above expressed by the district attorney, as to the inconvenience of the United States court-room at Bangor, on account of its smallness and lack of sufficient light and ventilation, and respectfully urge such alterations in the building as shall make these rooms more suitable for the purpose for which they were built.

CHARLES CLARK,

United States Marshal.

WILLIAM P. PREBLE,

Clerk United States District Court.

I concur in the general representations of the district attorney as to the inconvenience of the court-rooms at Bangor. If alterations are made in the building, a room much more convenient and suitable might be made at little expense. The present room is hot and very ill-ventilated, and the court sitting in high summer makes it hot and almost suffocating.

ASHUR WARE,

Judge United States District Court, Maine.

HOUSE OF REPRESENTATIVES,

Washington City, January 8, 1866.

SIR : I have the honor to submit for your consideration the memorial of the mayor, aldermen, and common council of the city of Bangor, Maine, asking for additional office accommodations for the United States officials in that city. A draught and plan has been recently made in your department for the enlargement of the custom-house, to meet the necessity, but estimates of the expense have not been made, and cannot be with any degree of understanding and accuracy without personal inspection of the site and premises by a competent architect and engineer. I respectfully ask that such competent person may be detailed by you to examine and report upon the subject, as well for your own information as to enable Congress to act understandingly upon the memorial referred to.

Very respectfully, your obedient servant,

JOHN H. RICE.

Hon. HUGH McCULLOCH,

Secretary of the Treasury.

MINERAL LANDS.

(To accompany bill H. R. No. 322.)

JUNE 5, 1866.—Ordered to be printed.

Mr. JULIAN, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was recommitted House bill No 322, providing "for the survey and sale of the lands of the United States containing gold, silver, and other valuable minerals; for the assaying and coining of such minerals, and for other purposes," having had the same under further consideration, now report it back with amendments, and recommend its passage. Along with said bill, as amended, they likewise submit the following report:

The right disposition of the vast mineral wealth of our western States and Territories involves the gravest questions of finance, and of statesmanship. It vitally concerns the future population and industrial development of the immense regions looking towards the Pacific, whose destiny is bound up with that of the Union, and thus challenges the enlightened and considerate judgment of the whole American people. The just solution of a problem so grand, affecting interests so priceless and far-reaching, may rightfully claim, if not imperatively demand, the timely attention of our rulers. The pregnant mountains and valleys of the great west to-day plead for the shaping hand of Congress in wisely appointing the future well-being of the millions who must there find their homes; and the measure of our duty can only be computed by the greatness of our opportunity. The men now in charge of the government cannot escape the great responsibility thus brought to their doors; for their action, or their failure to act, must alike send down its consequences to the remotest generations of men.

The gold-bearing portions of the United States on the western side of the continent extend from thirty-one degrees and thirty minutes north latitude to the forty-ninth parallel, and from one hundred degrees of longitude to the Pacific, embracing portions of Dakota, Nebraska, Colorado, New Mexico, Arizona, Utah, Nevada, California, Oregon, Washington, Idaho, and Montana, and covering an area of more than a million square miles. These regions are described in official reports as stretching longitudinally and in lateral spurs, crossed and linked together by intervening ridges, connecting the whole system by five principal ranges, which divide the country into an equal number of basins, each being nearly surrounded by mountains and watered by mountain streams and snows; thereby interspersing this immense territory with bodies of agricultural lands equal to the support, not only of miners, but of a dense population. These mountains, as officially reported, are literally stocked with minerals, gold and silver being interspersed in profusion over this immense surface, and daily brought to light by new discoveries.

According to the Commissioner of the General Land Office, a greater amount of mineral wealth is to be found in the territory of the United States than in all other habitable countries. In his report for 1862 he estimated the production of gold in that year, in California and other western gold-bearing regions, at one hundred million dollars; and the Secretary of the Interior, in his report of the same year, estimated that if an amount of labor relatively equal to that expended in California had been applied to the gold fields known to exist outside of that State, the production, including that of California, would have exceeded four hundred million dollars. It should be added, also, that immense deposits of iron and coal are to be found in most of the localities in question, which abound, generally, in the useful as well as the precious metals; whilst their forests of valuable timber, their agricultural and pastoral advantages, and their vast water-power, born of the mountains, supply additional and very potent inducements to extensive colonization and speedy settlement. "Interests so immense," says the Commissioner of the General Land Office, in his last report, "so intimately interwoven with the pursuits of our people, so essential to an adequate increase of the proper currency basis of the country, affording so extended a field for the enterprise of our citizens, and with necessary development a solid basis for national credit and commercial ascendancy, it would seem, should receive the fostering care of the executive and legislative mind, and be placed upon such fixed and solid foundations as will secure to individuals the permanent enjoyment of the legitimate fruits of their labor and enterprise, and to the country the enduring advantage and supremacy which the possession of such resources should command." With these manifestly just observations the committee perfectly agree; nor do they anticipate any difference of opinion from any quarter. What the country wants—and they must regard it as among the prime necessities of the crisis—is some *positive* policy in dealing with interests so precious and so magnificent; and they can think of no public service more praiseworthy than that of searching out such a policy and commending it to the government, if it shall be found practicable.

In approaching the consideration of this subject the committee feel entirely safe in condemning the present or negative policy of the government. In the first place, that policy is a misnomer; it is, in fact, no policy at all. When the government reserves its mineral lands from sale, and then comes to a dead halt, leaving them absolutely to the fate of time and chance, it simply *abandons* them. A policy implies that something is to be done, and points out the method of doing it; but the reservation from sale, with no substitution of any action whatever, is in effect an avowal by the government that it does not want a policy, and will not have one, and renders it as recreant as the father who abandons his own minor child. Congress is solemnly bound, as the trustee of the nation, and by the express terms of the Constitution itself, to "make all needful rules and regulations respecting the territory or other property belonging to the United States;" and yet the mineral lands of the government have been abandoned to any and all comers, from whatever quarter of the globe, for the past seventeen or eighteen years, during which more than a thousand million dollars have been extracted, from which not a dollar of revenue has been received for the national treasury, save the comparatively trifling amount recently derived from the internal revenue tax on bullion. These are significant if not startling facts. The mere statement of them supplies the committee with a very formidable argument against the "let alone" or "do nothing" administration of the past, and in favor of some radical change.

In the next place, the reservation of these lands from sale is exceptional. The government sells its lands containing iron, and copper, and lead, and coal, and the policy of vesting an absolute fee in individual proprietors is accepted by the nation without opposition or clamor. Is there any good reason why its lands containing gold and silver should not also be sold? Undoubtedly, the intrinsic

value of these metals gives to them a peculiar relation, and as the representative of values and the medium of exchange they perform a function totally unlike that of the merely useful metals. But the committee are not able to see why this should exempt the lands containing them from sale. The distinction between the useful and precious metals is somewhat artificial, and should be considered in the light of known facts. Gold and silver are properly regarded as really more useful than any other metals, except iron. Their freedom from rust and impurity makes them very desirable for table and kitchen furniture. Their beauty itself adds to their usefulness for many purposes, whilst their employment in the form of coin as a medium of exchange, instead of diminishing their usefulness, really adds to it, by endowing them with an office for which other useful metals are not fitted. They are therefore at once very precious and very useful; but this fact, it is submitted, does not necessitate any peculiar policy as to the lands in which they are found imbedded.

But the policy of reservation is not only exceptional, but anomalous, in a political point of view. It makes the government a great landlord or baron, and deals with the miner as a sort of feudatory or serf, or, at best, a tenant at will. Such a policy finds its best defence in European ideas, which ought wholly to be forsaken in a republic. Our institutions are not monarchic, but democratic, and so should be our ideas and our policy. The governments of the Old World reserve their mineral lands for the Crown, because they are esteemed too precious for the people; and we cling to this folly, while pretending to have outgrown the anti-republican heresies against which our revolutionary fathers contended. With us, government is not everything, and the people nothing, as in the kingly or feudal systems, but the people are the sovereign, and government simply their servant. If the mines are precious, they belong, for that very reason, to the people; and the remotest thing possible from a safe precedent for us is the example of governments resting upon feudal ideas, and utterly hostile to popular rights. Our American theory has respect chiefly to the individual, and strives to strengthen the government by intrenching it in the hearts and homes of the people. The multiplication of homesteads and permanent settlers on our great agricultural domain has become the cherished and favorite policy of both the government and people; and the same policy, for the same reasons, should be accepted as to our great mineral domain.

The policy of reservation from sale encounters still another argument, in the fact of its signal failure, after many years of actual trial. The ordinance of 1785, for the disposal of the lands in the "Western territory," contained the first reservation of mineral land from sale. Some fifteen years later, authority of law was given for leasing such lands. At one time even agricultural lands were reserved, under regulations providing for leasing the same; and this fact may be worth noting, as showing how unsafe it would be to make the past action of the government the guide of our steps to-day. In 1807 the power to lease was confined to lead mines. Congress, however, by act of March 3, 1829, conferred authority on the President to expose to sale, as other public lands, "the several lead mines and contiguous lands in the State of Missouri;" but, with this exception, the policy of reserving mineral lands from sale, and of leasing lead and copper mines, continued till the year 1846, when Congress ordered "the several lead mines and contiguous lands in the States of Illinois and Arkansas," and the then "Territories of Wisconsin and Iowa," to be exposed to sale at not less than two dollars and a half per acre. In the following year Congress ordered the organization of the Lake Superior district, in the upper peninsula of Michigan, and the Chippewa land district in Wisconsin, and provided for the sale of lands containing copper, lead, or other valuable ores, at a minimum price of five dollars per acre. These acts of Congress show how long and patiently the government acted the part of national landlord, over its national tenants, the miners of the northwest; and the experiment failed

utterly. The leasing policy drew into the mining regions a population of vagrants, gamblers, and ruffians, excluding sober and intelligent citizens, and making the establishment of organized civil communities impossible. Their houses were mere hovels and shanties. They resisted the payment of taxes on the products of the mines, and defied the agents of the government.

The policy was likewise a drain upon the treasury. From April, 1843, to October, 1845, the cost of managing the copper lands was nearly thirty-three thousand dollars, in salaries and contingencies, and the avails of the leases less than two hundred dollars. The expenses of the leasing system from the year 1841 to 1844, both inclusive, were over twenty-six thousand dollars, and the rents only six thousand three hundred and fifty-four dollars, to say nothing of the waste of timber and losses by careless mining. From 1821 to 1845 the cost of managing the lead mines was over sixty-eight thousand dollars, while the annual average revenue was only three thousand one hundred and ninety-six dollars. The settlement and civilization of these mining regions was not only thus prevented, but neither the national treasury nor the miner was the gainer. And yet the miners were as clamorous against the sale of these lead and copper lands as are the miners of California to-day against the sale of gold and silver lands. The government, however, was at length forced to sell them in fee. It provided for a geological survey of them, and their sale upon six months' notice, which should show the number and locality of the different mines, the quality of the ore, the facility of working it, the distance from market, &c. The lands having been taken up by the lessees of the government, the tracts occupied and worked possessed every variety of shape and boundary, yet there were no difficulties which were not readily adjusted under the regulations of the land department. A new class of men at once took possession of these regions as the owners of the soil, brought their families with them, laid the foundations of social order, expelled the barbarians who had secured a temporary occupancy, and thus at once promoted their own welfare, the real prosperity of the country, and the financial interest of the government. This instructive failure of the leasing policy in the mines of Illinois was preceded by a similar one in the lead mines of Missouri; and there is one unbroken chain of testimony against the policy of retaining the fee of mineral lands in the government, and dealing with the miners as tenants. If it be said that the policy of selling gold and silver lands has not been tried, it may be replied that for that very reason no fact founded on experience can be adduced against it, whilst it is supported by that reasoning from analogy supplied by the pregnant facts just recited as to the sale of lands containing the useful metals.

It may be replied further, in the language of Mr. Benton, in a remarkable speech on this subject in the year 1822, that "the spirit of tenancy is everywhere the same; it is a spirit adverse to improvements, always leaning towards the injury of the property in possession, and always holding back from the payment of rent." This perfectly well known principle must apply to all tenancies, whether they relate to the precious or the useful metals; and the committee adduce it, with its practical illustration in the historical facts they have referred to, as furnishing a very strong argument in favor of a radically different policy. It may be added that these views are fully sustained by the Secretary of the Treasury, who says in his late report, that "copartnership relations between the government and miners will hardly be proposed, and a system of leasehold, if it were within the constitutional authority of Congress to adopt it, and it were consistent with the character and genius of our people, after the lessons which have been taught of its practical results in the lead and copper districts, cannot, of course, be recommended."

These objections to the reservation of mineral lands fairly open the way for some kindred considerations, which plead with great force for their absolute sale in full. And first, the committee refer to the great question of security for

titles. The Secretary of the Treasury, in his report just referred to, speaking of mineral lands, says, that "after giving the subject as much attention as the constant pressure of official duties will permit, the Secretary has come to the conclusion that the best policy to be pursued with these lands is the one which shall substitute an absolute title in fee for the indefinite possessory rights or claims now asserted by miners. The right to obtain a fee simple in the soil would invite to the mineral districts men of character and enterprise; by creating homes, (which will not be found when title to property cannot be secured,) it would give permanency to the settlements, and, by the stimulus which ownership always produces, it would result in a thorough and regular development of the mines." The United States Miners' Journal, which copies this, adds, that "until the miners can own the fee simple of the soil on which they bestow their labor, they will be essentially nomads. Let them have something that they can call their own, so that they will be encouraged to build, and improve, and adorn; to set out orchards, plant vineyards, and establish homes; and we shall soon see a vastly improved condition of things in the mining districts."

The truth of this has been verified in the case to which the committee have already referred of the lead mines of Illinois. Fixed titles will bring into the mining regions a population of permanent settlers, of sober, intelligent, wealth-producing people. Population, it must be remembered, is not always wealth. It must be permanent, industrious, and able to find its support in the rewards of its labor and the general prosperity which that labor will receive. Permanent settlements are not to be expected under a policy which treats miners as mere tenants at will, because no miner can have any security for the claim he may select. Having no better title to the land he occupies than he has to the whole of the unoccupied country around him, he is perpetually tempted to change his habitation. Having no tie of absolute ownership to bind him to the soil, no permanent improvements on it, and no motive to make such improvements, he is at perfect liberty at any moment to find an abiding-place elsewhere. That miners should become essentially nomadic, under such a policy, is both natural and inevitable; but that Congress should expect from it either revenue to the government or the development of our mineral resources, seems utterly incredible.

The argument in favor of the policy of sale, founded on the insecurity of titles, finds a very strong additional support, and a most instructive illustration, in the actual condition of mining and mining claims in the principal gold-bearing regions. As an example, the committee may refer to the new State of Nevada; and perhaps they cannot do better than quote the following from the recently published report of the senate committee of that State on mines and mining interests. The committee say, that "as to uniformity, there is nothing approaching it. There never was confusion worse confounded. More than two hundred petty districts within the limits of a single State, each with itself-approved code; these codes differing not alone each from the other, but presenting numberless instances of contradiction in themselves; the law of one point is not the law of another five miles distant, and a little further on will be a code which is the law of neither of the former, and so on *ad infinitum*, with the further disturbing fact superadded, that the written laws themselves may be over-run by some peculiar custom which can be found nowhere recorded, and the proof of which will vary with the volume of interested affidavits which may be brought on either side to establish it. Again, in one district the work required to be done to hold a claim is nominal, in another exorbitant, in another abolished, in another adjourned from year to year. A stranger seeking to ascertain the law is surprised to learn that there is no satisfactory public record to which he can refer; no public officer to whom he may apply, who is under any bond or obligation to furnish him information or guarantee its authenticity. Often in the new districts he finds there is not even the *semblance* of a code, but a simple resolution adopting the code of some other district, which

may be a hundred miles distant. What guarantee has he for the investment of either capital or labor under such a system?"

The report proceeds to show that these regulations, such as they are, have no permanency. "A miners' meeting," the committee say, "adopts a code; it stands apparently as the law. Some time after, on a few days' notice, a corporal's guard assembles, and, on simple motion, radically changes the whole system by which claims may be held in a district. Before a man may traverse the State the laws of a district, which by examination and study he may have mastered, may be swept away and no longer stand as the laws which govern the interest he may have acquired, and the change has been one which by no reasonable diligence could he be expected to have knowledge of."

As to protection to the miner and encouragement to the capitalist, the report shows that "the present system, or rather lack of system, affords neither. The curse of uncertainty of titles to land in our sister State did not, through fifteen years of her history, more paralyze *her* progress, than the uncertainty of mining titles in the outside districts now retards *our* development." These interesting facts, officially stated in the interest of the miners of Nevada, will doubtless apply in the main to the great mining districts outside of that State. They teach but one lesson, well stated in the report referred to, namely, "the need of some legislation which will enable those who are citizens in fact to acquire a title which will *stand in law*, and which will give assurance to capitalists from abroad that they may safely invest in the mines." This is the great want, and the cry which comes up from the miners in all sections. Several of the mining States and Territories are now seeking a remedy for the evils referred to in the adoption of codes of local law regulating the possessory rights of individuals; but the *root* of the mischief is the reservation of the fee by the government, and no mere lopping off the branches will suffice. Let Congress extend the operations of the land office over these reserved regions, and when the title has been fairly vested in the miners, through a well-digested system of survey and sale, order will gradually grow out of chaos, and make impossible the intolerable mischiefs which else will be sure to follow. This is the sovereign remedy, and the facts recited show that local laws, or any law of Congress which shall recognize them as its basis, will only aggravate the difficulty. Radical work is demanded, seeking a cure for existing evils in the removal of their cause, and every hour of delay will but multiply the obstacles which the present policy of the government has already occasioned.

The moral bearings of the argument against uncertainty of titles is not less worthy of consideration. Homes are scarcely possible where titles are uncertain; and, accordingly, every fact of the miner's condition bears witness to his transitory character. A people without fixed habitations, and whose time is largely employed in migrating from place to place, must practically dispense with domestic life. The disproportion of women to men in such communities is not remarkable, nor should we be surprised that among the comparatively few women to be found in many of the mining localities, a lamentable demoralization is found to exist. This, in the opinion of the committee, is among the saddest facts connected with our present policy. It is a conspiracy against the establishment and sacredness of American homes. It has been said, with truth, that the best part of the education of every man and woman is received at home. This is the grand school for virtue. One of our most gifted American writers says, that just so far as the family is improved, its duties performed, and its blessings prized, all artificial institutions of society, including government itself, are superseded. The family is the foundation of the state, the peculiar institution of God, and the government should guard it as the mother guards the life of her child. Our chief controversy with the existing policy is, that it makes the establishment of homes practically impossible in vast regions of our unoccupied territory, which else might be dotted over with

peaceful habitations. It sanctions the virtual outlawry of woman, while public opinion, which, in well-regulated communities, exerts a wholesome influence over the individual, is unfelt. The better class of miners are soon tempted to leave the country, while the lower and more brutalized classes are constantly swelled by that law of moral gravitation which draws kindred spirits together. The committee believe that nothing can so effectually arrest the growth and dominating influence of this evil element as the policy of conferring permanent homes upon the occupants of the soil. This will drive out the vicious, the thriftless, the dissipated, as it did in the lead and copper regions of the northwest, and introduce order, industry, and real civilization in their stead. With these, the wealth of the mines will be extracted, and, by becoming the subject of taxation, increase the revenues of the government, while rewarding the miner for his toil.

Again, and aside from moral and social considerations, the policy of vesting the fee in individual owners is to be decidedly commended. No country can prosper in which land does not become valuable, and increase in value with the increase of population. Our present policy totally overlooks this principle. By denying permanent ownership in the soil, and thus preventing its improvement, it necessarily keeps down its value. While it fails to draw from the mines the wealth which they contain, for reasons already given, it cripples enterprise in this and other directions by depriving capital of its best possible security for its investment. Men will not lend their capital to mining projects when the title to the soil is in the government and cannot be pledged as security. This non-employment of capital not only retards mining, but keeps idle multitudes of laborers who need employment. Money, demanding investment nowhere, is sent to New York or to Europe. On this point the committee do not speak at random. According to Hittell, long a resident of California, and to whose valuable and interesting work on the resources of that State the public is greatly indebted, some forty million dollars have been annually shipped from the State because there was nothing to give as security. "We offer to pay," says he, "twice as much interest as anybody else, and our offer would be gladly accepted if there were a certainty that we would pay as we promise, but there is no certainty, no security." Every interest is thus made to suffer under this false policy. It operates unequally. "The farming districts," says the same authority, "where the inhabitants own the land, pay heavy land taxes, whereas mining claims pay no taxes at all. The result is that the taxation upon the men in the valleys is about three times as heavy as upon those in the mountains. The miners generally, having no fixed homes, cannot be compelled to pay taxes. Most of the mining counties are deeply in debt, and many are growing deeper every year. The only way to equalize the taxation is to sell the mineral lands, and compel the miner to pay a tax upon his mine, as the farmer on his farm." The committee believe the justness of these observations will not be questioned, and they will probably apply to nearly all our mining regions as well as to California.

A still further argument in favor of the policy of selling the fee of our mineral lands may be founded on strictly financial considerations. In the judgment of the committee, there is very great need of an increase in the *quantity* of the precious metals. The disproportion of gold and silver to other values and to our commercial wants is very remarkable. If practicable, it should be reduced. The property of the United States within the last ten years has increased about nine hundred million dollars per year; and this increase is estimated to be more than two hundred times greater than the increase of coin during the same period. It is believed that some policy which will secure to the government a fresh and liberal supply of the precious metals will be found absolutely necessary. This necessity, the committee believe, can be met by the policy for which they plead. The sale of our mineral lands, as already argued, by securing perfect.

titles, establishing permanent settlements, promoting a more thorough knowledge of localities, and instituting a more profitable system of mining, will materially increase the quantity of coin extracted. And the proceeds of the sales would also soon be felt in the treasury returns, and thus aid in removing our immense national debt. The sales would certainly be considerable. The spirit of enterprise, of adventure, was never more alive among our people than to-day. The demand for labor, caused by the waste of war, can scarcely be appreciated, and must largely swell the tide of immigration. The rapid settlement of our distant territories within the past few years, attributable to the beneficent policy of the homestead law and the tempting discoveries of their precious metals which have been made, are exceedingly prophetic of their speedy population. The Secretary of the Interior, in his report for 1862, estimated that at least five hundred million dollars could be realized by the sale of our mineral lands in one-acre lots, after granting to those engaged in mining a clear title, without cost, to the lands they occupied. Should only one-half, or even one-fourth of this estimate be accepted as reliable, it would furnish an argument of no inconsiderable weight in favor of the policy of sale. If the treasury of the government were now full to overflowing, as we have known it in the past, the committee would not urge this consideration. They would apply to our mineral lands the great principle embodied in the homestead law, which aims at the settlement and improvement of our public domain as the true source of revenue. The bill reported by the committee does recognize this principle to a very great extent, as will be seen by reference to the fifth section, and the policy of sale is only partially urged, as a public necessity, which demands that this immediate source of financial relief shall not escape. Our debt, while it is not crushing, is heavy. For many years to come it will be felt as a serious burden, and will require the hand of taxation to be laid upon every available source of supply. No honorable expedient for raising revenue should, therefore, be slighted by the government, or will be overlooked by the people, in this season of pressing necessities.

Finally, the committee would vest the fee of mineral lands in the miners themselves, because of the very precariousness of their occupation. Although mining has done the world an incalculable service in the supply it has furnished of the precious metals, and although fortunate adventurers have realized from it very handsome returns, and in rare instances great wealth, yet no business is more proverbially hazardous, or less remunerative, as a general rule. What Dr. Adam Smith said on this subject, more than three-quarters of a century ago, has been fully verified by time, and is confessedly true to-day: "Of all those expensive and uncertain projects," says he, "which bring bankruptcy upon the greater part of the people who engage in them, there is none, perhaps, more perfectly ruinous than the search after new silver and gold mines. It is, perhaps, the most disadvantageous lottery in the world, or the one in which the gain of those who draw the prizes bears the least proportion to the loss of those who draw the blanks; for though the prizes are few and the blanks many, the common price of a ticket is the whole fortune of a very rich man. Projects of mining, instead of replacing the capital employed in them, together with the ordinary profits of stock, commonly absorb both capital and profit." This is believed to be the ordinary experience of miners, and substantially accords with the published opinions of the late convention of miners in California. They indorse the estimate that all the gold ever extracted in that State, after deducting the cost of machinery, would not pay for the labor that has been spent in prospecting and mining since the settlement of the State, at the rate that ordinary labor during the same time has commanded in the east. The miner of copper or iron knows something of his business and its profits; the hunter of gold plays a mere game of chance. The business, however, continues to be prosecuted. The spirit of adventure and the hope of gain still blind the eyes of men to the hazards and hardships of gold-digging. Disowning all the teachings of experience, men still

refuse to be disenchanted, and the committee believe that since their occupation is so profitless to themselves and so advantageous to the country, the government should give them a title to their lands in fee, instead of the uncertain possessory rights asserted by themselves. This will be a just safeguard and encouragement to the miners, and will therefore be the best policy for the nation, since the more thorough exploration it will stimulate, will increase the amount of coin, and thus augment the revenues of the government through the enhanced profits of the miner. It is scarcely necessary to add that the miners themselves, whether in California or elsewhere, earnestly desire a title in fee to their claims, and they only object to such conditions of acquiring it as would interfere with their fairly vested rights, founded on discovery or the labor and capital expended.

Before concluding their report on this important subject, the committee take leave to notice the principal current objections to the policy proposed. And, first, it is said that the sale of mineral lands would prevent further prospecting. This objection is urged in an elaborate memorial of the miners of California, prepared and adopted in a general convention held in Sacramento in January last. The policy of sale, the memorialists say, "would lock up these lands from general prospecting—the means by which new mines are now found, and new sections of the country developed. That feature of the present system which has given it so much efficiency and extended discoveries would be destroyed; for no man could prospect on the land of another, and no one would seek a mine which he had not the ability to buy." This is a total misconception of the policy of sale, and especially of the provisions of the bill reported by the committee. No bill, in fact, yet reported in either branch of Congress for the sale of mineral lands, has contained any prohibition, express or implied, against prospecting. On the contrary, the tempting stimulus of a title in fee, offered by the policy of sale, would naturally wake up the spirit of adventure, and render prospecting more extensive and thorough. Of course, the sale of a given tract would put an end to prospecting upon it, except by the owner; but the possessory right of the miner under the present policy has the same effect. The objection under notice is a perfectly gratuitous assumption. So far as the bill of the committee is concerned, the fifth section of it, as amended, provides "that, whenever a person is, or shall hereafter be, in the occupancy of a mine, or lead, or deposit of mineral, and shall be actually mining or working the same, such person shall be, and is hereby, authorized to enter the lands so actually worked or mined by legal subdivisions, at a price to be computed by the costs of survey and the fees of the proper land offices." Instead of a prohibition against prospecting, here is the strongest temptation to those adventurous men, of small means, who are so useful as pioneers, and whose occupation, it is foolishly said, would be gone if our mineral lands were exposed to sale. Men of capital will also be tempted to become adventurers under the new motive which will thus inspire them. Indeed, the provision recited opens up all the lands of the government containing gold or silver to pre-emption, bribing all classes of men to search out their mineral wealth, by the offer of a title to it when found, at a cost almost nominal. Surely, if prospecting has done as much as is generally alleged to develop mineral wealth under the present system, the policy of general pre-emption and of fixed titles would not do less.

Kindred reasoning supplies an answer to another current objection to the policy of sale, namely, that it would expel the miners from their claims, and compel them to lose the labor expended upon them and the advantages thereby secured. The miners, we are told, are generally poor, and would not be able to buy their claims, even at a moderate valuation; and thus, it is argued, they would lose their fairly-earned rights. Their mining improvements, on which they have bestowed the labor and profits of years, would be swept away. It is scarcely necessary to remark that this objection also assumes what is palpably untrue. Even the bill for the sale of mineral lands which was reported in the

last Congress did not require the occupant of a mine to compete with other purchasers at the sale, but gave him the pre-emption at the minimum price, which the bill undertook to fix by a fair assessment. But the bill now reported by the committee, in the section already recited, expressly recognizes the vested rights of mining occupants, and only requires them to pay for their claims the costs of survey and land office fees. This extends the principle of the homestead law to this class of lands, and enables the poorest miners to secure all their just rights. It is at once just and liberal towards the adventurers and pioneers who open the pathway to settlements and civilization in the distant west. It conforms to the general policy of the nation respecting the public domain, and thereby commends itself to popular favor. And while it abridges the direct returns to the treasury which otherwise would be derived from the proceeds of sales, the committee believe this will be more than compensated by the rapid settlement of the country and the development of its wealth which will follow. It may be added that this feature of the bill possesses the further merit of disarming the enemies of the policy of sale of their most formidable weapons, and of thus aiding the success of a measure deemed of great national importance.

Another objection to the proposed policy relates to the difficulty of applying the rectangular system of surveys to the mineral districts. Square claims and regular lines, it is said, are impossible. The peculiar location and direction of the mineral deposits give every variety of shape and form to the claims founded upon them, and render any regular plan of survey impracticable. The size and form of mining claims are declared to be so various and unequal that no disposition of them by acres would be possible. To all this the committee reply, that every claim, whether in the placer or quartz regions, has some form and limit, and that if miners have sufficient intelligence to agree upon the boundaries of their possessory rights, the government, through its proper agents, aided by the knowledge of the miners themselves, could fix and make authentic the proper boundaries. The rectangular system, having been adopted by the government from the beginning, should be adhered to, so long as found practicable. In very many instances a departure from it would doubtless be found necessary, and the bill of the committee accordingly provides for it. The eleventh section enacts "that in extending the United States surveys over the mineral regions, the surveyor general shall be, and he is hereby, authorized, whenever he shall find mining settlements made in accordance with surveys executed by such settlers, to establish such surveys by lines, courses, corners, and so forth, connecting such lines and corners with the boundaries and corners of the sections of the rectangular surveys, and designate those lots by suitable numbers on the plats of survey, giving the reasons and facts in full for such anomalous surveys." The committee respectfully submit that this provision substantially disposes of the objection in question, and thus renders any further notice of it unnecessary.

One further objection to the policy of sale demands the notice of the committee. It is alleged that "large tracts of mineral land will pass into the hands of speculators, to lie unimproved and unproductive." This objection is urged by the California memorialists, before referred to, and is perhaps quite as much insisted on, generally, as any other. The committee are not able to see its force. Land monopoly is unquestionably an evil; but why is there more danger from the monopoly of mineral than of agricultural land? And why is the monopoly of lands containing gold and silver more to be dreaded than that of those containing copper, lead, iron, and coal? As to speculation by foreigners, the bill of the committee forbids their becoming purchasers unless they shall have declared their intention to become citizens; and no purchaser can buy more than forty acres. No doubt these lands will become the subject of monopolies, just as will our coal, iron, and other lands. The monopoly of agricultural lands has been a terrible national evil, and no legislation has been able wholly to prevent it; but no one proposes to reserve them from sale on that account. Our mine-

ral lands have already become the subject of monopoly under the present policy. Capitalists, both foreign and native, enter the great mining regions, and purchase and monopolize the possessory rights of miners, and they will continue to do so, in spite of any prohibitions. No legislation, and no failure to legislate, can altogether prevent these evils; and this is a sufficient reply to all that can be said against the monopoly of the fee of mining lands. The committee believe, however, that the evil of such monopoly will be much less than is apprehended.

It is not probable that capitalists will become the first purchasers, or that the richest places will necessarily fall into their hands. The men on the ground, engaged in actual mining, who have pioneered their way, will be likely to secure the best investments; for under this bill they have the right of pre-emption, and cannot be compelled to compete with capitalists in the purchase. If capitalists buy the lands, they cannot afford to let them remain idle and unproductive. If they can in any way evade the law, and secure enough to be fairly named a monopoly, their own interest will prompt them to develop its riches; and this will bring into the mining regions a goodly number of laborers, who will find remunerative employment, and help extract from the earth its hidden treasures. It should, perhaps, be added, by way of completing the answer to this objection, that the policy of reserving from sale the fee of mining lands is an indorsement of wholesale monopoly by the government itself. If monopolies are pernicious, as the committee admit them to be, they are so in principle. Government monopolies are not less so than others, and have often been as much worse as their greater power of evil would permit. The feudal system was land monopoly in its highest estate, in its logical completeness, accepted and actualized in its diabolical sway over the people who toiled as its slaves; and those who still cling to the relics of this system can hardly claim the virtue of consistency in opposing the sale of mineral lands in fee, on the ground that such sale would lead to their monopoly by speculators.

The committee deem it unnecessary to discuss the details of the bill herewith reported, and which is designed to carry out the policy advocated. It provides for vesting the fee in individual proprietors, by public and private sale, subject to the provisions before recited in favor of mining occupants. It contemplates the survey and sale of mineral lands in small tracts, and fixes a minimum price upon them, graded according to size, locality, and mineral value. It prohibits combinations among bidders at the public sales, and the purchase of lands by foreigners, as already mentioned. It gives a right of pre-emption to discoverers and workers of mines, and thus protects all their fairly-acquired rights. It limits the quantity of land which any single purchaser may buy to forty acres. It requires that the gold and silver extracted shall be assayed and coined in the assaying and coining districts of the United States, and empowers the President to lay off the mining regions into such districts for that purpose. It provides, as before stated, for a departure from the rectangular system of surveys, when found necessary, and allows of such divisions and subdivisions in point of quantity as the circumstances may require. It further provides that every purchaser shall first take the oath of loyalty to the United States prescribed by law, and that the net proceeds of the sales of these lands shall be dedicated and applied to the payment of the principal and interest of the bonds of the United States. This is a brief outline of the principal features of the measure, which are detailed in its several sections. The policy it contemplates is emphatically commended to Congress by Secretary McCulloch in his official report, and the committee feel confident that in some form it is destined to prevail. It may be delayed for a time, and that delay may prove most embarrassing and expensive to the country; but the growing power of American ideas and the sure march of events are the pledge of its ultimate triumph. The title of the government, sooner or later, will be surrendered, and vested in individual holders, as in the

case of other public lands ; and the only present obstacles to a just and wise method of doing this are the prejudices and misconceptions which have been fostered in some of the mining regions, and among capitalists in the east. These will not be enduring. Resolves of legislatures, and memorials of miners' conventions against the sale of mineral lands will not long mislead the sober judgment of the nation on a question of so much magnitude.

As regards the bill of the committee, it is undoubtedly imperfect. The inauguration of a measure so revolutionary of past ideas, and dealing with interests so momentous and peculiar, could not be otherwise. Its passage would be an experiment, and difficulties would certainly interpose themselves in the way of its proper execution ; but holding the principle it embodies to be sound, and apprehending far greater difficulties in maintaining the present policy, the committee would launch the measure, trusting that time and experience will point out its defects, and suggest the needed remedies, should it become a law. That it would powerfully stimulate the settlement and development of the great Pacific States of the future, the committee fully believe. By drawing into our mining regions a large and constantly swelling stream of settlers, it would demand and necessitate the speedy construction of our great railway thoroughfares to the Pacific. In securing perfect land titles, it would build up permanent settlements, and promote a more profitable system of mining than could otherwise be possible. The establishment of mining communities would necessarily lead to the exploration and purchase of the agricultural lands in the valleys, and thus develop their productive power. The policy of the bill would rebuke those feudal ideas to which the government has so long lent its sanction, and thus more completely Americanize our land system. It would consolidate the Union by volunteering the nation's liberality and good will to the teeming millions, whose habitations are to be set up in the great empire of States now so rapidly springing into life in the distant west, and thus prove itself a compact of blessedness with the ever-unfolding future. In a word, it would encourage social order, domestic life, fixed habits, free schools, homogeneous communities, and general prosperity, in the place of itinerant and scattered tribes, whose condition could best be defined by the absence of all these blessings. Entertaining these views, the committee have deemed it proper to give them expression, and to bespeak for them the candid consideration of Congress and the country.

NAVAL STATIONS ON THE LAKES.

[To accompany bill H. R. No. 653.]

JUNE 6, 1866.—Ordered to be printed.

Mr. BRANDEGEE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom were committed sundry bills of the House for the establishment of navy yards and naval depots at Cleveland, Ohio, at Grand Haven, Michigan, and at Milwaukie, Wisconsin, have had the subject under consideration; and in view of the immense magnitude of the commerce of the northwestern lakes, and its contiguity to the domain of a great naval power, whose sudden hostility would find it, in its present unprotected state, an easy prey to its rapacity, respectfully report back said bills with a substitute, combining them all in one, the passage of which they recommend to the House.

JOHN C. McFERRAN.

[To accompany bill H. R. No. 474.]

JUNE 15, 1866.—Ordered to be printed.

Mr. ANCONA, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Lieutenant John C. McFerran, praying to be credited on the books of the Treasury Department with the sum of \$1,265, for which, as assistant commissary of the United States army, he erroneously receipted to Lieutenant Francis J. Thomas, also an assistant commissary in said army, make the following report:

The testimony presented to the committee fully establishes the following state of facts:

That the petitioner, being an assistant commissary in the United States army, stationed at Santa Fé, in New Mexico, was, on or about the 1st day of November, 1850, required to receive of Lieutenant Francis J. Thomas, also an assistant commissary in said army, a large amount of money belonging to the United States, and to pass to said Thomas his official receipts for the same. That before the counting of said money was completed, there being several sealed boxes of specie with the amounts purporting to be contained in each marked thereon, the said Thomas, by representing that it was necessary for him to return without delay to the Atlantic States; that if compelled to remain until the whole counting was completed he should be subjected to great delay and inconvenience, and that the contents of said remaining boxes had been counted by himself or under his immediate supervision and the boxes correctly marked, induced the said petitioner to take the said boxes by the marks thereon, and to receipt to the said Thomas for the entire amount thus indicated. That said boxes of specie were placed in a government vault at Santa Fé, and were taken out and the contents counted from time to time, as the funds were required for the use of the army. Save one box, which contained an excess of two dollars over the amount marked thereon, all the boxes were found to be correctly marked, except a box numbered 21, which was the last one opened, and the contents of which were found to fall short of the amount marked thereon by the sum of \$1,267. This box was opened and its contents counted by the petitioner in the presence and with the assistance of Wm. J. Gourlay, chief clerk of the subsistence department in Santa Fé, in June, 1851, some seven months after it had been received from Lieutenant Thomas. The committee have no doubt, however, from the evidence, that it had in the mean time remained unopened and its contents undisturbed.

That immediately after the discovery of said deficiency, the petitioner transmitted to the chief of the bureau at Washington having charge and control of the subsistence department of the army, notice of the said deficiency, with all the attending circumstances, with a request that no settlement should be concluded between the accounting officers of the government and the said Thomas

until the matter should be fully investigated by the proper authorities. Yet the said Thomas was permitted to settle his accounts and to resign without any such investigation being had, and received credit for the whole amount for which the petitioner had receipted as aforesaid, and which entire amount was charged to the petitioner on the books of the treasury.

That the said Thomas being the owner of valuable property in the Territory of New Mexico, the petitioner commenced a suit against him in the United States district court of said Territory for the recovery of the amount of said deficiency, and sued out a writ of attachment, which was levied on the lands and tenements of the said Thomas within the jurisdiction of said court; but, on the hearing of said cause, the court dismissed the attachment on the ground that the money which the plaintiff was seeking to recover was the property of the United States, and not the property of the said petitioner, and that said Thomas was bound to account to the United States for the same, and not to the petitioner.

It is shown by a certificate of the Third Auditor of the Treasury that at the time of the resignation of Lieutenant Thomas he was in default to the United States in the sum of \$9,161 48, in addition to the amount for which he improperly got credit as aforesaid.

The committee is entirely satisfied of the integrity and good faith of the petitioner in the premises, and entertains no doubt that there was in fact the deficiency which he alleges in the contents of said boxes at the time he received them from the said Thomas.

From the above statement of facts it will be seen that Thomas stands credited on the books of the Treasury Department with the sum of \$1,265, as having been paid over to McFerran, which he never did in fact pay over to him, and that McFerran stands debited with the same amount, which he never in fact received.

Admitting that McFerran was guilty of some degree of negligence in not counting all the money for which he receipted to Thomas, that fact alone is not sufficient to charge him with the amount of said deficit. From the mere facts that an agent has been negligent and his principal has suffered loss, it does not necessarily follow that the agent is bound to make the loss good. The further fact should be shown that the loss was a *consequence* of the negligence.

The mere fact that McFerran erroneously gave a receipt to Thomas for money of the United States which he never received of him, changed none of the rights or remedies of the government as against Thomas. The error in the receipt was explainable by parol testimony in an action at law, and when explained the receipt could not operate as any bar to a suit by the United States against Thomas for the recovery of said money.

If the United States lost any of its remedies against Thomas, it was not because McFerran gave the erroneous receipt, but because the error was not discovered for several months after the receipt was given. If Thomas was solvent at the time the receipt was given, and became insolvent before the error was detected, it may be that the United States lost the money in consequence of the failure of McFerran to count the funds for which he receipted to Thomas. But there is no evidence before the committee to show that the United States could have enforced the payment of said deficit from Thomas, at any time between the giving of the receipt and the discovery of the error, by any means that were not equally available after the error was detected.

It appears from evidence before the committee that it has been the practice of many collecting and disbursing officers, in both the civil and military departments of the government, to receive from other public officers large amounts of specie in bags and boxes, and receipt for the same according to the labels thereon, without actually counting the contents, in cases of emergency, under circumstances similar to those which influenced the conduct of the petitioner in this case. Bankers and other business men, reputed to be prudent, often receive

and account for large sums of money in like manner, without actually counting the same, where they have reason to repose confidence in the person from whom the same is received.

There is nothing in the evidence before the committee to show that McFerran had any reason to suspect the integrity of Thomas at the time he received said boxes of specie from him. If he exercised the same degree of care and diligence that public officers, reputed to be prudent and faithful, are accustomed to exercise under similar circumstances in respect to the public funds passing through their hands, and that bankers and business men are accustomed to exercise in the conduct of their own private affairs, it may be questioned whether he should be required to make good a loss incurred by the government *in consequence* of his omission to count the money. But admitting that McFerran was guilty of *laches* that would justly render him responsible to the government for any losses clearly resulting therefrom, the committee are of opinion that there is not sufficient evidence that the government in fact lost anything in consequence of his failure to count said money to justify the government in requiring him to pay into the treasury said sum of \$1,265 which he never received.

Entertaining this view of the case, the committee are of opinion that said petitioner is entitled to be credited on the books of the Treasury Department with said sum of \$1,265, and therefore report the accompanying bill for his relief.

CHARLES M. STOUT.

[To accompany bill H. R. No. 641.]

JUNE 15, 1866.—Ordered to be printed.

Mr. ANCONA, on leave, made the following

REPORT.

The Committee on Military Affairs, to whom was referred "An act for the relief of Charles M. Stout, late a second lieutenant in company E, 7th Pennsylvania reserve corps," report:

That Charles M. Stout entered company E, 7th regiment Pennsylvania reserve corps, as a private, about the 1st of August, 1861, and served as such until the 1st of August, 1862, when, under General Orders of General McClellan, he was appointed a second lieutenant in this company, and was soon afterward detailed as adjutant of the regiment, in which capacity he served under General Pope in the battles in front of Washington, and at Antietam. He was afterward wounded at the battle of Fredericksburg, while fighting on foot, his horse having previously been killed under him during the same battle. He was removed to Carver United States general hospital in this city, and from thence he obtained permission to come to the city, so that his accounts as such officer might be stated and paid. He was placed under the care of Dr. Meredith Clymer. The pay department directed Major Gideon J. Ball, an assistant paymaster, to state and settle his accounts from the 1st of August to 31st of October, 1862, inclusive, which was done, showing an amount due him of \$308 59. Exception was, however, taken to the payment of his account on the ground that the act of assembly of Pennsylvania which authorized the raising of the Reserve Corps provided for the election of the officers by the men, and not by appointment; and inasmuch as he had not been elected, payment was refused, and on the 30th day of January, 1863, Lieutenant Stout, being unable to maintain himself as an officer without compensation as such, returned again to the ranks and served as a private through the campaigns following, and until after the battles of the Wilderness, in May, 1864. The object of this bill is to pay him for his services as an officer from the 1st day of August, 1862, to the 30th day of January, 1863, for which period he received no compensation whatever. In view of these facts the committee unanimously recommend the passage of the accompanying bill.

CAPTAIN JOHN J. YOUNG.

[To accompany bill H. R. No. 682.]

JUNE 15, 1866.—Ordered to be printed.

Mr. ELDRIDGE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the case of Captain John J. Young, of the United States navy, have investigated the same and submit the following report of the facts in the case :

It appears that Captain Young entered the navy of the United States in 1812, and was in active sea service, having been regularly promoted to the rank of lieutenant, until May 9, 1829, when he lost both his legs by the recoil of a gun, which was fired on board of the United States ship-of-war Hornet to bring to a suspected slaver. In 1840 he was promoted to the rank of commander. On the 12th day of August, 1854, Captain Downes of the navy died, and Captain Young was entitled by seniority to be promoted to the grade of captain; but he was passed by the Secretary of the Navy, Mr. Dobbin, and Commander Bell was promoted to the position to which Captain Young was entitled by the long-established custom of the Navy Department. In 1855 he was placed on the "reserved list" by the retiring board, created by the law of that date. In 1865, March 10, he was commissioned by Abraham Lincoln, President of the United States, as captain on the "retired list," and his commission was antedated August 12, 1854, the date at which, by the custom, he might have been promoted. It also appears that since the 12th day of August, 1854, he has been in the receipt of a pension from the United States. He claims the pay of captain on the "retired list" from the date of his commission, when he should have been promoted to the rank of captain, to the 10th day of March, 1865, since which date he has received the pay of captain on the "retired list." And the committee are unanimously of the opinion, in view of the long and faithful services of Captain Young, and in view of the peculiar circumstances attending his retirement, and it being from no fault of his, that he should have the relief he asks. And the committee recommend the passage of the accompanying bill.

JOHN K. HICKEY.

JUNE 15, 1866.—Ordered to be printed.

Mr. DARLING, on leave, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the bill for the relief of John K. Hickey, beg leave to report :

That they have examined the case and the papers accompanying the same, and have arrived at the conclusion that, in their opinion, while said Hickey may be entitled to the relief asked for, there exists no necessity for the action of Congress, as, in the judgment of said committee, the Secretary of the Navy has ample power, under existing laws, to grant the relief asked for by said John K. Hickey.

JOHN A. NICOLET

JOHN A. NICOLET, of the State of Wisconsin.

Mr. Speaker, I have the honor to report the following

REPORT

The Committee on Finance, to whom was referred the bill for the relief of John A. Nicolet, do hereby report as follows:

That they have examined the case and the papers accompanying the same, and have arrived at the conclusion that in their opinion, while said Nicolet may be entitled to the relief asked for, there exists no necessity for the action of Congress in the judgment of said committee, the Secretary of the Treasury has sufficient power under existing laws to grant the relief asked for by said John A. Nicolet.

GEORGE C. JOHNSON.

[To accompany bill H. R. No. 142.]

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred House bill No. 142, for the relief of George C. Johnson, with the memorial and papers, having had the same under consideration, make the following report:

That on the 29th of July, 1831, certain chiefs of the Shawnee nation of Indians acknowledged an indebtedness to claimant of \$20,510. That on the 9th of August, 1832, they provided for its payment by a bond for \$4,000, payable when they should receive their first payment for lands sold to the United States, and by giving eight drafts on the Secretary of War, payable out of accruing annuities, which drafts matured in the years from 1833 to 1840, inclusive, being for \$2,000 each, except the last, which was for \$2,510. Four of these drafts have been paid and \$2,000 on the bond, leaving \$10,510 of the original sum unpaid. No further payments could be made, as the annuities expired in the year 1846. The unpaid drafts and bond are not produced, and are said to be lost.

The Shawnee nation were moved to Kansas in 1832. In 1833 certain chiefs of the nation acknowledged the validity of the claim, on the personal application of the claimant to them in Kansas. In 1850 they gave an order on R. W. Thompson by certain chiefs for the balance then due, to be paid in case the Shawnee nation should recover from the United States 100,000 acres of land which they claimed.

The committee have only printed copies of this order, and of the acknowledgment of the claim in 1833 and of the original contract.

The Shawnee nation now resist the claim. They present evidence in regard to Johnson's dealings with the tribe rendering it doubtful if he could have had so large a claim. They deny that the nation, as a nation, owed any debt in Ohio. Johnson was a licensed trader among them in Ohio, having only a small store of goods, kept in a log house fourteen by sixteen feet square, and consisting of a few articles of Indian trade.

James B. Gardner, agent of the Shawnees, who was present at the first acknowledgment of the debt in Ohio, says, in his certificate, "that he knows nothing of the validity of the claim, nor of Johnson's dealing with the Shawnees."

The Shawnees present the affidavit of Charles Bluejacket and Charles Tucker that the reacknowledgment of the claim in Kansas, in 1833, was obtained by fraud; that Johnson then represented that he was getting their permission to come among them again as a trader.

How the order on Thompson was procured there is no evidence. It might have been procured in order to obtain influence for the Indians in securing the 100,000 acres of land claimed by them of the government.

On a careful review of the evidence, the committee cannot find sufficient proof to support the claim. The petitioner asks for a law authorizing the retention of future annuities to pay the balance of his claim. The contract made in Ohio is alleged to have been contrary to the customs of the tribe, because it made them liable, as a tribe, for the individual debts of its members; and considering the extent of the claimant's business as a trader, the amount seems unreasonably large. If the original claim was valid, the committee cannot see why the petitioner went to Kansas, in 1833, to procure its re-acknowledgment. The testimony that this was obtained by falsehood and misrepresentation surrounds the case with strong circumstances of suspicion.

Under these circumstances, the committee feel compelled to report adversely, and recommend that the bill be laid on the table.

ELIZA T. MOREHEAD.

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom were referred the memorial and evidence of Mrs. Eliza T. Morehead, of the District of Columbia, having had the same under consideration, report :

That this is a claim for the price of five slaves emancipated by the act of Congress approved April 16, 1862, entitled "An act for the release of certain persons held to service or labor in the District of Columbia."

By the second section of said act, all persons *loyal* to the United States holding claims to service or labor against persons discharged therefrom by said act were authorized, *within ninety days* from the passage of said act, *but not thereafter*, to apply for compensation for such service in the manner prescribed by the act aforesaid. The petitioner did not apply within the time limited by the act of emancipation. She attempts to escape the neglect in such manner as to require special legislation for her relief.

The committee do not think she has succeeded in this attempt.

It is a remarkable circumstance, connected with this application, that the petitioner and her husband were within the rebel lines during the entire duration of the war; and that her husband was all the time an officer of the rebel army, serving first under *Beauregard*, then under *Jackson*, then under *Lee*.

There are strong reasons for believing that the two daughters of petitioner, in whose behalf compensation is in part prayed for, were during the war violent *secessionists*, and rendered to the rebel authorities all the aid and comfort in their power.

The committee will also remark that the husband of the petitioner is still the owner, as they are informed, of some six hundred acres of land near Culpeper, Virginia, and that the entire case, as presented by the petitioner, leads to the conclusion that after the war commenced the petitioner availed herself of the first opportunity to leave Washington and to join her husband, then in the rebel army; and that she remained with him, sympathizing in the rebellion, until the capture of Richmond and the surrender of Lee rendered the cause hopeless.

Entertaining these convictions, the committee cannot suppress the hope that this claim will never receive a favorable report before this or any future Congress.

They therefore recommend its rejection, for want of justice, loyalty, and merit.

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Volume 10
Part 1
1880

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JAMES PRESTON BECK.

[To accompany H. R. C. C. No. 109.]

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred H. R. C. C. No. 109, for the relief of James Preston Beck, administrator of Preston Beck, jr., deceased, late surviving partner of the firm of Brent & Beck, together with the report of the Court of Claims, having had the same under consideration, report :

That this bill was reported to the thirty-seventh Congress by the Court of Claims, appropriating the sum of six thousand five hundred and sixty-five dollars to satisfy a judgment of said court in favor of said James Preston Beck, administrator of said Preston Beck, jr., deceased.

The claim on which this decision was made is for a herd of mules, horses, and asses forcibly captured and taken possession of by a band of Navajo Indians on the 12th September, 1849, in the vicinity of Santa Fé, New Mexico.

The 17th section of the act of Congress of June 30, 1834, provides "that if any Indian or Indians belonging to any tribe in amity with the United States shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative or attorney or agent, may make application to the proper superintendent, agent or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent or sub-agent to make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction; and in the mean time the United States, in respect to the property so taken, stolen or destroyed, guarantee to the party so injured an eventual indemnification."

By this act it will be seen that the liability of the United States does not occur until the person claiming to have been injured by Indian depredations shall have applied for damages to the proper agent or superintendent of the offending Indians. And when such application is made, and the necessary "documents and proofs furnished," such superintendent or agent is, under the direction of the President, to make application to the proper nation or tribe of Indians for satisfaction. If the offending Indians refuse for twelve months to make satisfaction, the agent is to report to the Commissioner of Indian Affairs,

in order that further steps may be taken, and then, and not till then, does the "United States guarantee to the party injured an eventual indemnification." These things having all been done, the United States is authorized to deduct such damages out of any annuity thereafter payable to such Indians.

The committee, after carefully examining this case, are clearly of the opinion that there never was any presentation of this claim to the *Navajoes* under the act of Congress referred to. Without such a presentation, the United States had no right to reserve the damages out of annuities due said Indians, and without such presentation the United States did not guarantee in the language of the aforesaid act "*to the party so injured an eventual indemnification.*"

In this view of the case, therefore, the committee are of the opinion that the claim should be disallowed.

A further objection to the claim is, that the *Navajoes* were not in "amity" with the United States when the injury was committed.

The facts clearly show that there was no actual "amity." A treaty with this tribe was signed on the 9th of September, 1849, three days before the injury complained of was committed.

Is *amity* to be presumed from the treaty?

The evidence shows that friendship did not follow this treaty. It also appears that the Indians who committed the damage complained of on the 12th of September, 1859, were some 270 miles from the place where the treaty was made, and could not have known of the treaty. It is not a fair presumption, therefore, that the signing of the treaty on the 9th of September, and before it could have been known to the nation, did of itself produce such a condition of affairs as is intended by the 17th section of the act of 1834, wherein it refers to Indians "*belonging to any tribe in amity with the United States.*"

But to this it may be added that this treaty was not ratified by the Senate until long after the injury complained of was committed; and if amity is to be presumed as a necessary result of a treaty, when the fact is that hostilities still exist, certainly the treaty should be made complete and binding by its formal ratification before this legal presumption in violation of the established fact is permitted to arise.

On both points the committee believe the claim is defective, and therefore report adversely, with recommendation that the bill be laid upon the table.

JAMES L. JOHNSON.

[To accompany H. R. C. C. No. 110.]

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred H. R. C. C. 110, "for the relief of James L. Johnson, surviving partner of the firm of Beck & Johnson," with the report of the Court of Claims, having had the same under consideration, report :

That this bill was reported by the Court of Claims to the thirty-seventh Congress, appropriating two hundred and fifty dollars to satisfy a judgment of said court in favor of said Johnson.

The claim on which the decision of the court was made is for property taken and destroyed in 1857 by the Kiowa Indians, near Fort Atkinson, on the Arkansas river.

The 17th section of the act of Congress of June 30, 1834, provides—

"That if any Indian or Indians belonging to any tribe in amity with the United States shall, within the Indian country, take or destroy the property of any person lawfully within the said country, or shall pass from the Indian country in any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent to make return of his doings to the Commissioner of Indian Affairs that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction; and in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party so injured an eventual indemnification: *Provided*, That * * * * * if the nation or tribe to which such Indian may belong receive an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom and paid to the party injured."

By this act it will be seen that the liability of the United States does not occur until the person claiming to have been injured by Indian depredations shall have applied for damages to the proper agent or superintendent of the offending Indians; and when such application is made and the necessary "*documents and proofs furnished*," such superintendent or agent is, under the direction of the President, to make application to the proper nation or tribe of Indians

for satisfaction. If the offending Indians refuse for twelve months to make satisfaction, the agent is to report to the Commissioner of Indian Affairs in order that further steps may be taken; and then, and not till then, does the United States guarantee to the party injured an eventual indemnification. This having all been done, the United States is authorized to deduct such damages out of any annuity thereafter payable to such Indians.

The committee have carefully examined the case, and are clearly of opinion that there never was any presentation of this claim to the tribe of Kiowas under the act of Congress before referred to. Without such a presentation the United States had no right to reserve the amount of the claim out of annuities due said Indians. And without such presentation the United States did not guarantee, in the language of said act, "*to the party so injured an eventual indemnification.*" In this view of the case, the committee are of opinion that the claim should be disallowed. But it is exceedingly doubtful if certain treaties made between the United States and the Kiowa, Comanche, and Apache Indians in 1837 and 1853 do not supersede the provisions of the act of Congress of June 30, 1864. By the treaty of 1853 these Indians agree and bind themselves to make "*restitution, &c., for any injury, &c., to the people of the United States who may be lawfully residing in or passing through their said territories.*"

Here was a distinct agreement by the Kiowas to pay for a certain class of damages, which was made after the act of 1834. This treaty provides a new mode of adjustment; and although it may be claimed that the United States is bound to see that this agreement is complied with, still it appears to be exceedingly doubtful whether the previous obligation assumed by the United States in behalf of our citizens, under the act of 1834, "to guarantee an eventual indemnification," is not superseded by its duty to enforce the agreement which this tribe of Indians made in the treaty of 1853. If so, the Court of Claims had no jurisdiction.

The committee, therefore, report adversely, and recommend that said bill be laid upon the table.

WILLIAM TOWNSEND.

[To accompany H. R. No. 393.]

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred House bill No. 393, for the relief of William Townsend, having had the same under consideration, report:

That said Townsend claims to have procured a substitute in the county of Darke, in the State of Ohio, who entered the volunteer military service of that State on the 4th day of May, 1864, in the State organization known as the "*Ohio national guard*," or "*one-hundred-days men*," performing his full service therewith; that afterwards, on the 12th of May, 1864, he was drafted into the military service of the United States while he was so represented, and on the 31st of May following paid to F. M. Wright, receiver of commutation money for the fourth congressional district of Ohio, three hundred dollars, under the act of March 3, 1863, to become exempt from service under the said draft. He seeks by the provisions of this bill to have the said sum of three hundred dollars refunded to him, with six per cent. interest from the date of payment.

Knowing no law, and finding no precedent to warrant the restoration of money paid for exemption from the draft for military service, the committee feel it would be unwise and inexpedient to adopt the provisions of this bill.

The *Ohio national guard* was a volunteer organization, not expecting to perform service beyond the limits of the State, and limited to one hundred days when called out by the governor. It was not expedient that men entering that organization, either personally or by substitute, should thereby exempt and shield themselves from the service due from every citizen of the United States to the government in time of war.

To establish this precedent would open the door for numerous claims of the same class. The committee therefore recommend that the bill be laid upon the table, and that they be discharged from its further consideration.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE HOUSE
ON JANUARY 10, 1877

ALBANY: PUBLISHED BY THE STATE OF NEW YORK
1877

The following is a summary of the report of the Commissioners of the Land Office, in response to a resolution passed by the House of Representatives on January 10, 1877. The report contains a detailed account of the land owned by the State of New York, and the various uses to which it is put. It also contains a list of the lands which are now being sold by the State, and the proceeds of the sale. The report is divided into two parts: the first part contains a general statement of the land owned by the State, and the second part contains a detailed account of the lands which are now being sold. The first part of the report is divided into three sections: the first section contains a statement of the land owned by the State, the second section contains a statement of the land which is now being sold, and the third section contains a statement of the land which is now being leased. The second part of the report is divided into two sections: the first section contains a statement of the lands which are now being sold, and the second section contains a statement of the lands which are now being leased. The report is a very important document, and it is one which should be read by every citizen of the State of New York. It contains a great deal of information which is of great value to the people of the State. It is a document which should be read by every citizen of the State of New York, and it is one which should be read by every citizen of the State of New York.

CITY OF OMAHA, NEBRASKA.

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims have had under consideration the petition and vouchers of the mayor and city council of the city of Omaha, in Nebraska, and report:

That the city council of the city of Omaha, in Nebraska, asks to be paid the sum of fifty-six thousand nine hundred and twenty-five dollars and seventy-six cents, which said city claims to have expended in completing a building in Omaha designed as a capitol for Nebraska Territory, under the following circumstances:

It is alleged that Congress heretofore appropriated fifty thousand dollars towards a capitol building in Omaha.

That in A. D. 1855 the building was commenced, and the appropriation having been expended, the work thereon ceased in A. D. 1856. The building having been left with its walls partly up and without being roofed, it was likely to be seriously injured; and under these circumstances, and in the expectation that Congress would make further appropriations for its completion, the said city of Omaha proceeded to make the expenditure before stated. It is also averred that the building was necessary for the use of United States officers.

The committee are unable to see that any valid claim exists against the United States, assuming all the allegations in the petition to be true.

It seems that Congress refused to appropriate any further sum after the fifty thousand dollars appropriated in A. D. 1854 had been exhausted.

If the government saw fit thus to refuse, even at the hazard of the destruction of the work done, it had a right so to do; and the city of Omaha, by voluntarily finishing the work, could not invest itself with a *claim* against the United States for the money thus expended.

For some reason unknown to the committee, Congress has constantly refused since 1856 to make any further appropriation for the building before referred to. As the committee are of opinion that the money expended by the petitioners does not constitute a legal claim against the government, they deem it their duty to report against the prayer of the petitioners.

It seems to the committee that this subject more properly belongs to the Committee on the Territories.

That committee can more accurately examine the relations of the Territory of Nebraska with the general government, and can better understand whether, in view of those relations, the United States is bound in equity to repay to the city of Omaha the amount which said city claims to have expended in completing the capitol for the Territory of Nebraska.

F. M. AND B. H. BIXBY.

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of Francis M. Bixby and Butler H. Bixby, merchants, of the city of New York, having had the same under consideration, report:

That the memorialists claim that on the 20th of October, 1865, they despatched on board the steamship D. H. Mount, bound for Jacksonville, Florida, an agent named Henry W. Rosebrook, in whose possession they placed two hundred compound interest notes of the United States, of the denomination of fifty dollars each, and one compound interest note of the denomination of five hundred dollars—total, ten thousand five hundred dollars—of the treasury issue of October, 1865, which money was the property of the memorialists, in the possession of their agent for the purpose of making purchases for them in the State of Florida. That said agent was provided with other funds sufficient for his expenses in the contemplated trip to Florida and return. That since the departure of said steamship she has never reached her destination, nor has she been heard from at any other port, nor has any passenger or person sailing with her ever returned or been heard from, and that it is believed that the vessel and everything on board were lost at sea in the gale that swept the Atlantic coast about the 23d and 24th of October, 1865.

The memorialists ask to be indemnified for their loss of \$10,500 in compound interest notes, and for the passage of an act directing the Secretary of the Treasury to reissue a like sum of money to them in lieu of the notes thus supposed to be lost.

These facts are stated on the oaths of the memorialists.

The receipt of the agent is presented as follows:

“Received, New York, October 20, 1865, from F. M. & B. H. Bixby ten thousand five hundred dollars, to be accounted for.

“H. W. ROSEBROOK.

“\$10,500.”

David H. Van Saun, in the employ of memorialists, corroborates the statement of these facts upon oath.

Emmerson Coleman, commission merchant, No. 80 Wall street, New York, testifies that he loaned to memorialists the amount of money claimed to have been lost at sea, for the purpose of making purchases in Florida through the agent, Rosebrook, and that the amount has been repaid by memorialists.

Edward F. Sinn, book-keeper in the employ of said Emmerson Coleman, testifies that by the direction of said Coleman, he drew from the National Bank of the Republic, in New York, “ten thousand five hundred dollars in six per cent. compound interest treasury notes of the United States, all of which were of the

denomination of fifty dollars, except one, which was for five hundred dollars, and handed the same, on the 20th of October, 1865, to Mr. Bixby."

Charles Goodspeed testifies that on and prior to the 20th of October, 1865, he was the agent and consignee, at the city of New York, of the steamer D. H. Mount; that the said steamer never reached her destination, and has not been heard from since the 20th October, 1865; that there is good reason to believe that said steamer was lost at sea on her passage to Jacksonville, Florida, and that all persons on board perished; that no person on board of her has, ever since her departure, been seen or heard of; that a gentleman named Rosebrook was a passenger on board said steam vessel on said trip.

Daniel S. Dickinson, late deceased, certifies, on the 24th of March last, "that he has had many years' acquaintance with memorialists, that they are gentlemen of integrity, and their statements entitled to full credit and reliance."

The committee would suggest, in considering these facts, that, in their judgment, relief should be granted to parties, in cases of the loss and destruction of government securities, with great caution, because of the great variety and number of such claims occurring through a great variety of accidents as well as the ease with which the government is liable to be imposed upon by uncertain testimony and unscrupulous claimants. In the case presented by these memorialists, the number and the date of the notes are not stated, and consequently the date of the maturity of the note is unknown, for which reasons, if no others existed, the committee could not recommend the relief prayed for by memorialists. As to compound interest notes or other notes bearing interest, and intended to pass as currency, it is the opinion of the committee that in no case ought duplicates to be issued from the very possibility of the existence and the future presentation of the originals for redemption. This class of notes has but a short period to run, and at a reasonable time after maturity, and upon clear proof of actual destruction, may be paid at the treasury without additional legislation. For these reasons it is not recommended that duplicate notes be issued to memorialists in lieu of those supposed to be lost.

Moreover, it is not clearly and specifically proven that the notes were taken on board the steamer D. H. Mount by the agent, or that the agent might not have exchanged or converted the same to his own use, or that the steamer was actually lost at sea with the agent on board. For these reasons, and in view of the insufficient testimony of the identity of the notes, the uncertainty of their maturity and of their loss or destruction, the committee report adversely to the prayer for relief, and recommend that the claim be rejected, and that they be discharged from the further consideration of the subject.

ELIZA JANE CHANEY.

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Mrs. Eliza Jane Chaney, of Hagerstown, Maryland, have had the same under consideration, and report:

That the petitioner alleges that in July, 1864, she was in possession of two hundred dollars, interest-bearing notes of the United States treasury, which were accidentally destroyed by fire while placed, for concealment, in the top of the stove in her dwelling-house. The evidence of this circumstance rests wholly on the claimant's affidavit and that of her daughter.

The committee cannot recommend the reimbursement of parties who have lost government securities by the common accidents of life without the clearest proof of possession and destruction, such as is not, in this case, presented. They therefore ask to be discharged from the further consideration of the subject.

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AMZI L. BURNS.

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Amzi L. Burns, of Luzerne county, Pennsylvania, for indemnity for the loss and destruction by fire of five hundred dollars in United States treasury notes, on the 5th of November, 1862, having had the same under consideration, report :

That from the evidence it appears that the notes alleged to be destroyed were notes for circulation, commonly called "green-backs;" that the positive destruction of the notes only appears from the evidence of the petitioner and members of his family; that without the clearest and most impartial and disinterested proof, the committee cannot recommend relief to parties for the destruction of government securities of any class, and that in no case would they recommend that unregistered securities and paper currency should be reimbursed to parties who may chance, by the common accidents of life, to lose it.

The committee therefore report adversely, and ask to be discharged from the further consideration of the subject.

BAPTIST AND UNITED BRETHREN CHURCH.

JUNE 15, 1866.—Ordered to be printed.

Mr. BARKER, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the petition and papers of the trustees of the Baptist and the United Brethren churches of Tyrone, Pennsylvania, praying compensation for damages to their church building by the United States military authorities, report adversely and ask leave to withdraw the papers.

NATIONAL BANKS IN THE SOUTHERN STATES.

JUNE 19, 1866.—Ordered to be printed.

Mr. BUCKLAND, from the Committee on Banking and Currency, made the following

REPORT.

The Committee on Banking and Currency, to whom was referred the resolution of Mr. James F. Wilson, inquiring whether any national banks in the southern States have had preference in the preparation and delivery of their circulation over national banks in other States, report the same back with the accompanying letter of H. R. Hulburt, Deputy Comptroller of Currency, containing the desired information.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
Washington, ——— —, 1866.

SIR : In response to your inquiry, made under a resolution passed by the House of Representatives December 18, 1865, "whether any order has been issued, or arrangement made, whereby national banks in the southern States should have preference in the preparation and delivery of their circulation over national banks in other States," I have the honor to submit the following statement :

On the 15th of September last there were six national banks organized in the southern States which had received no circulation, viz : two banks in Alabama, two in North Carolina, one in Georgia, and one in Virginia.

It was represented by the parties interested in these institutions, particularly by John Wilkes, esq., a son of Commodore Wilkes, and president of the First National Bank of Charlotte, N. C., that their section of the country was entirely destitute of currency ; that large amounts of cotton, tobacco, and other produce were lying idle for want of money to move them, and that there was much suffering in consequence.

Believing the country needed these products, and knowing that precedence in the preparation of circulating notes had been granted to the Wisconsin national banks at the time their State circulation was driven out of existence by the action of the Milwaukee and Chicago banks, I instructed the engravers to reduce the time required to prepare the notes for banks in the southern States, from four months, the ordinary time, to three months, thus giving the southern banks thirty days' preference.

When this order was given, the Continental Bank Note Company were delivering notes of the denomination of "five dollars" at the rate of five banks per day, and the American Bank Note Company were delivering notes of the

denominations of "ten" and "twenty dollars" at the rate of three banks per day; from which it will appear, (and the American Bank Note Company have so informed me,) that the precedence thus given would not, and did not, delay the preparation of notes for any other bank, in its regular order, more than two days.

It is proper to state that this action was taken in the absence of Mr. Clarke, the Comptroller, and that subsequently, when the order was brought to his notice, it was countermanded.

I have the honor to be, very respectfully,

H. R. HULBURD,

Deputy Comptroller of the Currency.

Hon. R. P. BUCKLAND,

Committee on Banking and Currency, House of Representatives.

FULLER vs. DAWSON.

JUNE 21, 1866.—Laid on the table and ordered to be printed.

Mr. PAINE, from the Committee of Elections, made the following

REPORT.

The Committee of Elections submit the following report in the contested election case of Smith Fuller against John L. Dawson, from the twenty-first congressional district of the State of Pennsylvania :

The twenty-first congressional district of Pennsylvania includes the counties of Westmoreland, Fayette, and Indiana. The official vote was :

For John L. Dawson.....	10,855
For Smith Fuller.....	10,730
	—
Majority for John L. Dawson.....	125

The contestant alleged, in his notice of contest, that the return judges of Westmoreland county unlawfully rejected certain military returns certified to them by the prothonotary of that county ; that the same judges omitted to include in their canvass certain other military returns for that county, filed in the office of the secretary of the commonwealth ; that fraudulent and illegal votes were cast for John L. Dawson at certain polls within the district ; that the return judges of Indiana and Fayette counties omitted to compute certain military returns for those counties, filed in the office of the secretary of the commonwealth ; and that, of the aggregate of votes, Smith Fuller had 11,068, and John L. Dawson 10,848.

The contestant claimed, in argument, that 367 lawful military votes were returned, which were not embraced in the canvass of the district board, and that of these votes 254 were cast for Smith Fuller, and 113 for John L. Dawson, as shown by the following table, taken from the contestant's brief :

Company or regiment, and place where election was held.	Fuller.	Dawson.
<i>Soldiers' votes not counted by return judges, but which appear among the returns of the prothonotary of Westmoreland county.</i>		
1. Company F, 193d regiment, Camp Smithers.....	4	1
2. Battery H, 4th independent artillery, Alexandria, Va.....	4	.....
3. McClellan U. S. A. hospital.....	3	.....
4. Columbia hospital, D. C.....	1	.....
5. Comp Fry, D. C.....	2	5
6. Company D, 4th cavalry.....	13	9
7. Company C, 4th cavalry.....	18	13
8. *Company C, 76th regiment, in the field, Va., (duplicate).....	.....	.....
9. Camp Parole, Annapolis, Md.....	1	.....

Company or regiment, and place where election was held.	Fuller.	Dawson.
10. Carver hospital	4	4
11. Company A, 11th regiment, Fort Dushane, Va.....	1	.....
12. 206th regiment, camp in the field, field and staff.....	2	.....
13. Company A, 155th regiment, near Poplar Grove church.....	7	.....
14. Company B, 155th regiment, near Poplar Grove church.....	4	1
15. Company E, 211th regiment, near Bermuda Hundred, Va.....	41	21
16. Lincoln general hospital	15	.....
17. Camp 15th regiment U. S. infantry, Lookout mountain, Tenn	3	.....
18. Cuyler U. S. hospital, Philadelphia	2	.....
19. Mower U. S. hospital.....	6	1
20. Company C, 212th regiment, Post No. 1, Pope's Head, Va.....	4	8
21. Company C, 204th regiment, Piedmont, Va	6	2
22. Company E, 204th regiment, Piedmont, Va	2	.....
23. Company E, 4th cavalry, in the field.....	3	1
24. Company M, 100th regiment, Poplar Grove church.....	3	.....
25. Companies C and D, 140th regiment.....	1	.....
<i>Soldiers' votes, single returns from the secretary of state, not embraced in the foregoing returns by prothonotary.</i>		
26. U. S. A. hospital, Broad and Prime streets, Philadelphia.....	1	.....
27. 107th regiment, Fort Wadsworth .....	.....	1
28. Rendezvous of distribution.....	4	11
29. Company G, 4th Pennsylvania cavalry, Petersburg.....	1	.....
<i>Soldiers' votes, single returns from the secretary of state, not embraced in returns from prothonotary of Indiana county.</i>		
30. Detachment of Pennsylvania volunteers, rendezvous of distribution.....	3	.....
31. Company E, 99th, and company G, 76th regiment.....	3	.....
32. U. S. A. general hospital, 23d and Filbert streets, Philadelphia.....	1	.....
<i>Soldiers' votes, single returns from the secretary of state, not embraced in returns from prothonotary of Fayette county.</i>		
33. Rendezvous of distribution, Va.....	8	.....
34. Company G, 140th regiment, near Petersburg, Va.....	1	.....
35. Camp Hamilton, company F, 152d regiment, near Fort Monroe.....	1	.....
36. No. 374 H street, Washington, D. C.....	1	.....
<i>Mixed or miscellaneous soldiers' votes, returned by the secretary of state, not embraced in the foregoing.</i>		
37. 16th and Filbert street hospital, Philadelphia.....	2	.....
38. Satterlee hospital.....	6	1
39. Company L, 6th heavy artillery, Accatinck bridge, Va.....	26	11
40. Company H, 211th regiment, defences of the James.....	10	13
41. Company F, 21st regiment cavalry, City Point, Va.....	3	.....
42. Depot field hospital, City Point, Va.....	4	.....
43. Company H, 16th cavalry, Poplar Grove church .....	.....	2
44. Company B, 161st regiment, Poplar Grove church.....	1	4
<i>Return of soldiers' votes received by the prothonotary of Indiana county after the meeting of return judges, first book, page 163.</i>		
45. Camp 67th regiment, Front Royal, Warren county, Va	28	4
Total.....	254	113
	113	.....
Fuller's majority	141	.....

The contestant also claimed in argument that, through an error in the computation of the return judges, John L. Dawson received 3, instead of 2, votes from company E, 105th regiment; that in footing up the votes of Mr. Dawson they also made a mistake of one in his favor; and that if these corrections were made in Mr. Dawson's majority of 125, and the military votes given in the foregoing table correctly counted, the result would be as follows :

Majority of uncounted military votes for Smith Fuller.....	141
Corrected majority of John L. Dawson.....	123
Majority for contestant.....	18

The contestant insisted in the argument that if the case should be decided upon technical grounds, eleven specified military returns, giving Mr. Dawson a majority of 31 votes, and alleged to have been actually included in the canvass, would be rejected, and Mr. Dawson's official majority of 125 thereby reduced to the extent of 31 votes. The following is a statement of the returns referred to, with the contestant's objections to each, copied from table No. 6 :

	Dawson.	Fuller.	Objections.
<i>Westmoreland county.</i>			
1. Co. B, 142d regiment	8	3	Only nine votes given. Certificate of judges does not state how many voted. Tally-list carries out eight for Dawson, none for Fuller. Return says, eleven votes polled, of which Fuller had three; none reported for Dawson.
2. Co. E, 206th regiment ...	30	24	Prothonotary's return does not give county, company, or regiment, place of voting, number of votes, nor vote for candidates. Secretary of state's return is entirely blank. Clerk does not certify that the judge was sworn.
3. Co. K, 206th regiment...	13	8	Return does not give company, place of voting, name of candidates, vote polled, nor any particulars.
4. 16th cavalry regiment....	1	0	Return does not give company, place of voting, name of candidates, vote polled, nor any particulars.
<i>Indiana county.</i>			
5. Lookout mountain hospital	1	0	Return does not give the number of votes cast. Two of the judges appear to be of the regular army.
6. Co. G, 76th regiment	7	6	Prothonotary's return, (p. 95,) no certificate that officers were sworn. Return does not give place of voting, company, or regiment, nor number of votes cast, nor number of votes polled for candidates. Secretary of state returns only four votes given, while vote is set down as five for Fuller and five for Dawson. Total vote is not given in return.
7. Co. G, 11th regiment	4	0	Thomas Horden, the judge who swore the officers, certifies that he swore himself; he does not appear to have been sworn. Return does not set forth the county. Mixed, (see book, 2, p. 373.)
8. Co. A, 155th regiment ...	2	0	Return does not give place of voting.

	Dawson.	Fuller.	Objections.
<i>Fayette county.</i>			
9. Co. E, 140th regiment . . .	6	4	Judge does not certify that the officers were sworn. Whole number of votes not stated. Return contains various congressional districts, as well as voters. Mixed. Secretary of state gives only ten votes. Tally-paper says, Fuller, five; Dawson, six. Return gives Fuller four, Dawson three.
10. Carver hospital.....	3	0	Return entirely blank.
11. 7th cavalry regiment.....	1	0	No return. Tally-paper given not signed. Officers not sworn.
	76	45	

Majority in favor of Mr. Dawson, 31.

He also insisted that the law was disregarded in the canvass of the home vote of Westmoreland county, of which Mr. Dawson received a majority of 1,477; that the returns of this vote were characterized by irregularities and frauds; and, finally, that the sitting member had, in his answer, failed to deny the averments of the notice, particularly the averment "that of the votes cast at the October election, 1864, Fuller received 11,068 votes and Dawson 10,848," and could not, therefore, dispute them in this contest.

On the other hand, the sitting member, in his answer and argument, insisted that the notice of contest was not served within the time limited by law; that it was never served on him personally or otherwise; that the contestant, on the first argument, abandoned all the averments of the notice except the first, second, fifth, sixth, and eleventh; that the first was alone entitled to consideration, and would not, if true, reduce the majority of the sitting member below fifty-nine; that the second, fifth, and sixth averments were bad, and the proof respecting returns not received by the proper officer before issuing the certificate of election insufficient, because it was neither alleged nor shown that the returns in the office of the secretary of the commonwealth had been "*bona fide* forwarded by the judges in the manner prescribed by law;" that the eleventh was not a particular specification of any ground of contest and was insufficient; that if sufficient it was not sustained by the proofs; that even if an unrestricted re-examination of the entire vote should be made, the sitting member would nevertheless retain his seat; that it was neither proven that all the votes lawfully polled were produced in evidence, nor that those produced in evidence were counted by the return judges; that the committee could only count those votes which were received too late to be counted by the return judges, and which, if received in time, could have been properly included in their returns; that certain fraudulent votes were cast and counted for the contestant, and that certain "false, fraudulent, imperfect, and illegal returns" were made in his favor and included in the canvass of the district board; and, finally, that no lawful votes were excluded from that canvass.

The points made on either side will be considered in the order in which they have been stated.

1. The military returns alleged to have been omitted from the canvass, although in many instances irregular and informal, seem to be good in substance, with the following exceptions, viz:

McClellan hospital, (No. 3.)—The return for Westmoreland county in this case is in all things, except the names and residences, identical with the return from the same hospital for Adams county made by the same officers, and produced in evidence in the case of *Koontz vs. Coffroth*, recently decided by this

house. In that case the majority used the following language: "Of the eight alleged as rejected returns for Adams county, the three from the hospitals viz: Mower, Cuyler, and McClellan, (papers 23, 24, 25,) are by all the committee admitted to be too defectively certified and authenticated to be entitled to any consideration. The law in relation to the certifying, signing, and returning, with the poll-book, the evidence of the administering of the oath to the officers of the election (sections 5 and 15) was wholly disregarded." The minority in the same case expressed the following opinion: "The three returns from the Mower, Cuyler, and McClellan hospitals (papers 12, 23, 24, 25) were rejected because the certificates of the oaths of the election officers were wanting. This was no lawful ground for their rejection, for it appears from the whole papers that the judges and clerks were actually sworn, and the returns, though defective in form, are perfectly intelligible, and clearly within the provisions of the statute applicable to mere informalities." The authority of that decision is unanimously recognized by the committee, although its correctness is still doubted by the minority. It excludes the three votes from McClellan hospital for Westmoreland county, which are claimed by the contestant. Upon similar but rather stronger grounds the following transcripts, which do not contain the poll-books or certificates of oaths, viz: battery H, 4th artillery, (No. 2;) Camp Parole, (No. 9;) Carver hospital, (No. 10;) field and staff, 206th regiment, (No. 12;) and company A, 155th regiment, (No. 13,) are rejected by the committee. They would give Mr. Dawson four and Mr. Fuller eighteen votes.

Company C, 4th cavalry, (No. 7.)—The certified transcript of the secretary of the commonwealth shows that there were only thirty voters for this district. The admission of this return in evidence being resisted, the votes will stand: for Smith Fuller, seventeen; for John L. Dawson, thirteen.

Lincoln hospital, (No. 16.)—Of these fifteen votes, eight are for Westmoreland, five for Indiana, and two for Fayette. The only proof before the committee respecting any of these votes, except the abstract on page 68 of book 1, which is not legal evidence, was the certified transcript of the prothonotary of Westmoreland county. And the question is whether this transcript is competent evidence of the vote for Fayette and Indiana counties. The following are the statutory provisions of Pennsylvania bearing upon the question:

MILITARY ELECTION ACT OF 1864.

SEC. 7. Separate poll-books shall be kept and separate returns made for the voters of each city or county; the poll-book shall name the company and regiment, and the place, post, or hospital in which such election is held; the county and township, city, borough, ward, precinct, or election district of each voter shall be indorsed opposite his name on the poll-books; each clerk shall keep one of said poll-books, so that there may be a double list of voters.

SEC. 8. Each ticket shall have written or printed, or partly written and partly printed thereon, the names of all the officers which may properly be voted for at said election for which the said elector desires to vote.

SEC. 9. That the judges to whom any ticket shall be delivered shall, upon the receipt thereof, pronounce with an audible voice the name of the elector; and if no objection is made to him, and the judges are satisfied that said elector is a citizen of the United States and legally entitled, according to the constitution and laws of this State, to vote at said election, shall immediately put said ticket in the box, or other receptacle therefor, without inspecting the names of persons voted for; and the clerks shall enter the name of the elector on the poll-book of his county, ward, precinct, city, borough, or township, and county of his residence, substantially, in pursuance of the form hereinafter given.

SEC. 10. At the close of the polls the number of voters shall be counted and set down at the foot of the list of voters and certified and signed by the judges and attested by the clerks.

SEC. 11. After the poll-books are signed, the ballot-box shall be opened and the tickets therein contained shall be taken out, one at a time, by one of the judges, who shall read distinctly, while the ticket remains in his hand, the name or names therein contained for the several officers voted for, and then deliver it to the second judge, who shall examine the same, and pass it to the third judge, who shall string the vote for each county upon a separate thread and carefully preserve the same; the same method shall be pursued as to each ticket taken out until all the votes are counted.

SEC. 13. As a check in counting, each clerk shall keep a tally-list for each county from which votes shall have been received, which tally-list shall constitute a part of the poll-book.

SEC. 14. After the examination of the tickets shall be completed, the number of votes for each person in the county poll-books, as aforesaid, shall be enumerated, under the inspection of the judges, and set down as hereinafter provided, in the form of the poll-book.

SEC. 16. A return, in writing, shall be made in each poll-book setting forth, in words at length, the whole number of ballots cast for each office, (except ballots rejected,) the name of each person voted for, and the number of votes given to each person, for each different office; which return shall be certified as correct, signed by the judges, and attested by the clerks. Such return shall be substantially as follows:

SEC. 17. After canvassing the votes, in manner aforesaid, the judges shall put in an envelope one of the poll-books, with its tally-list and return of each city, or county, together with the tickets, and transmit the same, properly sealed up and directed, through the nearest post office, or by express, as soon as possible thereafter, to the prothonotary of the court of common pleas of the city or county in which such electors would have voted if not in the military service aforesaid, (being the city or county for which the poll-book was kept,) and the other poll-book of said city or county, enclosed in an envelope, and sealed as aforesaid, and properly directed, shall be delivered to one of the commissioners hereinafter provided for, if such commissioner calls for the same in ten days; and if not so called for, the same shall be transmitted by mail, or by express, as soon as possible thereafter, to the secretary of the commonwealth, who shall carefully preserve the same, and on demand of the proper prothonotary deliver to said prothonotary, under his hand and official seal, a certified copy of the return of votes so transmitted to and received by him, for said city or county of which the demandant is prothonotary.

GENERAL ELECTION LAW.

Duties of the Prothonotary.

67. It shall be the duty of the prothonotary of every county to whom the return of any election shall be delivered by the judges, as aforesaid, when said judges are required to send a copy of said return to the secretary of the commonwealth, to make out a copy of such return, certified under his hand and official seal, and forthwith to transmit such copy, under a sealed cover, to the secretary of the commonwealth, by placing the same in the nearest post office. It shall also be the duty of the prothonotary of every county to record all the election returns in a book, to be procured for that purpose, and to lay the returns of the election of county commissioners and county auditors, and of all township officers, before the court of quarter sessions of such county.

68. It shall be the duty of every prothonotary to give a certified copy of the list of voters and other papers deposited in his office by the judges of an election to any person applying for the same on payment of the usual fees, as in other cases.

These provisions do not seem to make the certified transcript of the prothonotary of one county competent evidence of the votes of other counties. The prothonotary appears to be the lawful depository of military returns, so far as they pertain to his own county, and no further. And he can only certify to those of which he is the lawful custodian; at the same time the practical effect of such a construction of the law should not be overlooked. Separate poll-books, tally-lists, and returns are made for each of the counties. If three voters—one from each county—present themselves at the polls, their ballots are all deposited, without number, mark, or other means of identification, in one ballot-box, and the name of each is entered upon a separate poll-book for his own county. At the close of the polls the judges count the votes and find three for representative in Congress from this district. Suppose one to be for Mr. Dawson and two for Mr. Fuller, the judges are unable to prepare either the separate tally-lists or the separate returns, because they cannot know whether the vote for Mr. Dawson was cast by the Westmoreland, Indiana, or Fayette voter. A literal compliance with the law is absolutely impossible. They know that for the entire district Mr. Dawson appears to have one vote and Mr. Fuller two, but to which county to return the respective votes they cannot possibly decide. And if they make a return purporting to show for which counties the respective votes for Mr. Dawson and Mr. Fuller were cast, it must necessarily be fictitious. It is, therefore, impossible for the county return judges, and, of course, for the district return judges, to canvass any votes cast under such circumstances. And unless there is some other legal mode of proof, such votes might be utterly lost in a contest in this house, if a transcript certified by the prothonotary of one county could not be admitted to prove the votes of another. But there is another instrument of proof—the certified transcript of the secretary of the commonwealth, who is the lawful depository of military returns for every county in the State. This is not produced in the present case, and only eight of the votes contained in this return can be counted.

Company C, 212th regiment, (No. 20)—To this return, which gives Mr. Dawson a majority of four, there is the same objection as to the last, and the additional objection that it emanates from Allegheny county, which is not in the district, and purports to be not a copy of anything, but merely an abstract of votes.

Company E, 204th regiment, (No. 22,) and company E, 4th cavalry, (No. 23,) are also to be excluded for the same reason.

Company E, 99th regiment, and company G, 76th regiment, (No. 31.)—This return was counted as number 51, Cuyler hospital, and should not be counted a second time.

Camp Hamilton, (No. 35;) Filbert Street hospital, (No. 37;) Saterlee hospital, (No. 38;) company H, 211th regiment.—These four returns are obviously worthless. In the first of them the poll-book, tally-list, and return are without signatures; in the second, the tally-list and return are without signatures; in the third, the poll-book alone is signed by the judges, the tally-list is signed only by the clerks, and there is no return proper; and in the fourth, the poll-book, tally-list, and return are without signatures.

Depot field hospital, (No. 42.)—It is claimed that this precinct gave Mr. Fuller four votes and Mr. Dawson none. It is true that only four voters for this district are named, but both in the tally-list and in the return it is certified that Smith Fuller had four votes and John L. Dawson two votes. It is hard to see why Mr. Fuller should have them all. He should have two and Mr. Dawson two.

As the result of this examination, made without reference to the points raised by the sitting member, the following reduction is to be made in Mr. Fuller's alleged majority of uncounted military votes:

Majority of uncounted military votes.....						141
	Claimed—		Correct—		S. Fuller's	
	D.	F.	D.	F.	Loss.	Gain.
Battery H, 4th artillery.....	0	4	0	0	4	
McClellan hospital.....	0	3	0	0	3	
Company C, 4th cavalry.....	13	18	13	17	1	
Camp Parole.....	0	1	0	0	1	
Carver hospital.....	4	4	0	0	0	
206th regiment, field and staff.....	0	2	0	0	2	
Company A, 155th regiment.....	0	7	0	0	7	
Lincoln hospital.....	0	15	0	8	7	
Company E, 204th regiment.....	0	2	0	0	2	
Company E, 4th cavalry.....	1	3	0	0	2	
Cos. E and C, 99th and 76th reg'ts	0	3	0	0	3	
Camp Hamilton.....	0	1	0	0	1	
Filbert Street hospital.....	0	2	0	0	2	
Satterlee hospital.....	1	6	0	0	5	
Depot field hospital.....	0	4	2	2	4	
Company C, 212th regiment.....	8	4	0	0		4
Company H, 211th regiment.....	13	10	0	0		3
					—	—
					44	7
Reduction of 44 less 7.....						37
						—
						104
						==

2. It is maintained that the return judges erroneously counted Mr. Dawson's vote three instead of two in the case of company E, one hundred and fifth regiment. It is true that he received only two of these votes, one of the three having been cast for James H. Hopkins. But there is no proof that the three votes were counted for him except in the table on page 390 of the second book. That table purports to be a transcript of a paper signed, not by all nor by a majority of the return judges, but by "James C. Clark, president of the meeting of return judges," deposited in the office of the prothonotary of Westmoreland county, and by him certified.

In section 63 of the general election law, (Purdon, page 378,) it is provided that when, as in the case before us, two or more counties compose a congressional district, "the clerks shall make out a fair statement of all the votes" given in the county for the several candidates, "which shall be signed by said judges and attested by the clerks, and one of the said judges shall take charge of such certificate, and shall produce the same at a meeting of one judge from each county," at a place within the district designated by law, on the fourth Friday after the election.

This paper, exhibited on page 390 of the second book, is inadmissible, because only signed by one of the judges; but it would not be evidence before the committee even if signed by all the county judges, for the reason that when a congressional district is composed of two or more counties there is no authority for depositing any return or statement of the county board in the office of the prothonotary, as will be more fully shown hereafter. An error is alleged in the footing of Mr. Dawson's vote. It is manifest that the figures, as given by the contestant, are not correctly added. But while the proofs do show Mr. Dawson's home vote in each of the three counties, and his military vote in Westmoreland and Fayette, to have been as stated, the only modes of arriving at the military vote of Indiana county are, first, by subtracting the known votes from the aggregate, and, second, by taking the prothonotary's computation on page 96 of the first book. The first gives 128 as the military vote of Indiana county; and if it is correct, no error of addition was

made by the district board. The prothonotary's statement makes this vote 127, but it omits one return, (No. 52,) and is not competent as evidence, because it is merely a certified computation, and not a certified transcript of any official writing authorized by law.

3. If there is any specification in the notice of contest sufficient to put the sitting member upon his defence against the attempt to reduce his official majority, it is the eleventh, in which it is alleged that "Smith Fuller had for Congress 11,068 votes; John L. Dawson had for Congress 10,848 votes." But the official vote for Mr. Dawson was only 10,855. Under the notice of contest, therefore, his aggregate could only be reduced by 7 votes. And it is evident that the attempt cannot be successful unless it is shown (1) that the votes embraced in these returns were actually counted, and (2) that it was unlawful to count them. The only evidence that they were actually counted, aside from what appears in the table on page 389 of the second book, and relates exclusively to Westmoreland county, is to be found in the fact that the returns themselves are on file in the office of the secretary of the commonwealth or county prothonotary. But while it might well be claimed that the presence of regular returns in these offices would be *prima facie* evidence that they were embraced in the canvass, how can it be said that the presence of irregular returns would be *prima facie* evidence that they were counted? It seems to the committee that the presumption would be in the opposite direction. It has already been shown that the table on pages 389 and 390 is not competent evidence in the case. In order to determine whether it has been shown that it would have been unlawful to count these votes, the committee will consider the several returns in the order in which they appear in the table:

Company B, 142d regiment, (No. 1.)—The transcript certified by the secretary of the commonwealth, (book 2, page 259,) shows in the poll-book the names of only nine voters, in the tally-list gives Mr. Dawson eight votes, and in the return shows that eleven votes were polled, and that Mr. Fuller received three. The prothonotary's certified transcript of the return, (book 2, page 36,) shows that eleven votes were polled, of which Mr. Dawson received eight and Mr. Fuller three. The prothonotary's statement on page 77 of book 1, offered in evidence by the contestant, contains the names of Samuel Barr and Peter Rowan, both of Westmoreland county, in addition to the nine given by the secretary of the commonwealth. But this statement being a mere abstract, and not a transcript, is not competent evidence.

In the transcript from the office of the secretary of the commonwealth, (book 2, page 259,) the candidates for the several offices named in the tally-list are, without exception, different from those named in the return, while the return from the prothonotary's office, (book 2, page 36,) and the abstract on page 77 of the first book, give all the votes and candidates found on both the tally-list and return from the secretary's office. In all cases the return should give precisely the same candidates and votes as the tally-list. The transcript from the office of the secretary of the commonwealth is, therefore, on its face, irregular, while it is not apparent whether the irregularities originated with the judges of the election or in the secretary's office. It seems to the committee that this transcript cannot be relied upon as evidence. In the transcript from the prothonotary's office, the contestant does not give the poll-book or tally-list, but only the return. The return is regular, and the presumption is that the poll-book and tally-list, if produced, would also prove to be regular. And this presumption would become a certainty as to the poll-book, if the abstract offered by the contestant, on page 77 of book 1, were competent evidence, for that gives the names of eleven Westmoreland county voters. In the opinion of the committee, it has not been shown that this return ought not to have been canvassed. It does not appear that the majority of five, which this return purports to give for Mr. Daw-

son should be deducted from his aggregate majority of 125, if it was in fact included therein.

Company E, 206th regiment (No 2.)—The transcript from the office of the secretary of the commonwealth, although informal in the return properly so called, and in the clerk's certificate, is substantially in compliance with the law.

Company K, 206th regiment, (No. 3.)—The prothonotary certifies that the transcript given on pages 68 and 69 of the second book is a correct copy of the poll-book, tally-list, and certificate of the return of the election, but makes no allusion to the certificates of oaths in the case. If these votes were in fact canvassed, and the only evidence upon which the canvass was made was such as is found in this transcript, it is clear that, under the rule adopted by the majority of the committee respecting the hospital returns in the case of *Koontz vs. Coffroth*, these votes ought not to have been counted, for the certificates of oaths are entirely wanting. But it is not shown affirmatively that this was the only evidence, and the transcript raises no such presumption, because the prothonotary's certificate does not exclude the idea that perfect certificates may have been on file in his office.

16th Pennsylvania regiment, (No. 4.)—The contestant does not produce in this case a transcript of the poll-book, certificate of oaths, or tally-list, but only of the return properly so called. This return shows the regiment, place of voting, vote polled, and candidate voted for. It does not appear that the poll-book, tally-list, or certificate of oaths, which were not produced, were irregular.

Lookout Mountain hospital, (No. 5.)—Only the return, strictly so called, is given in the prothonotary's transcript. That does not contain a statement of the whole number of votes cast; but the tally-paper may show it, if produced. The following returns, among others, admitted in favor of the contestant, exhibit the same informalities: company A, 11th regiment; company C, 204th regiment, companies C and D, 140th and 116th regiments; and United States Army hospital, Broad and Prime streets, Philadelphia. But Hospital Steward N. R. Carson, United States army, and Medical Cadet George W. Terabery, United States Army, were two of the judges of the election. The provisions of the military election act apply to all qualified electors of the commonwealth who are in any actual military service under a requisition from the President of the United States, or by the authority of the commonwealth. In the opinion of the committee, the entire volunteer army was in the military service under the President's requisition, and volunteer officers appointed by the President were as much a part of that army as those appointed by State authority; but the regular army was not in the military service under the President's requisition. These two judges appear to have belonged to the regular army, and the vote ought not to have been counted for Mr. Dawson.

Company G, 76th regiment, (No. 6.)—The secretary of the commonwealth (B. 2, p. 288) names only four voters, all from Indiana county, and yet gives each candidate five votes. The transcript from the prothonotary of Indiana county (B. 2, p. 95) exhibits the names of the same voters from Indiana county, and nine others from Westmoreland county, and gives Mr. Dawson seven and Mr. Fuller six; but the rule recognized in the case of *Lincoln hospital* admits this latter transcript only as evidence for Indiana county. These votes ought not to have been counted, if, in fact, they were counted. Their rejection would in that case reduce the official majority of Mr. Dawson by one vote.

Company G, 11th regiment, (No. 7.)—This is the correct vote for Indiana county, (B. 2, pp. 123, 373.) The clerks and two of the judges were regularly sworn. Thos. Horden certifies that he administered the oath to Thos. Horden and J. W. Brindell, as judges, and to both the clerks. I. McAllister, one of the clerks, certifies that he administered the oath to the third judge, J. Shepler. All were therefore regularly sworn except Mr. Horden. The return should not be rejected.

Company A, 155th regiment, (No. 8.)—The objection is that the return does not give the place of voting; but, the poll-book shows the place to have been near Poplar Grove church, Dinwiddie county, Virginia.

Company E, 140th regiment, (No. 9.)—In the transcript from the office of the secretary of the commonwealth (B. 2, p. 358,) the poll-book signed by the judges shows that ten votes were cast for the district; the tally-list signed by the two clerks shows that Smith Fuller had five and John L. Dawson six votes, while the return itself, signed by the judges, shows that Smith Fuller had four and John L. Dawson three votes. The certificate of the prothonotary of Westmoreland county (B. 2, p. 166) shows that four of these were cast for Smith Fuller and six for John L. Dawson. But it also shows that only three of the ten votes were cast by electors of Westmoreland county. The vote if counted would stand for Mr. Fuller four, for Mr. Dawson three, and there would result a reduction in Mr. Dawson's majority of three votes.

Carver hospital, (No. 10.)—The transcript in this case is sufficient. That which is wanting in the return proper, is supplied in the poll-book and tally-list.

7th Pennsylvania cavalry, (No. 11.)—The document certified on page 304 of book 2 is worthless as evidence, being merely an unsigned tally-list, and if it secured Mr. Dawson one vote, that vote should be deducted from his majority.

As the result of the examination of this branch of the contestant's claims, which has been made also without reference to the points raised by the sitting member, the following votes, if they were in fact counted, are to be deducted from Mr. Dawson's official majority of 125

	Official.		Correct.		Loss.
	D.	F.	D.	F.	
Lookout hospital	1	0	0	0	1
Company G, 76th regiment	7	6	0	0	1
Company E, 140th regiment	6	4	3	4	3
7th Pennsylvania cavalry	1	0	0	0	1
					— 6
Corrected majority for J. L. Dawson					119

4. The objections to the regularity of the home vote of Westmoreland county do not seem to the committee to have been well taken. The military election act of August 25, 1864, requires the county judges, at their first meeting, to adjourn until the third Friday after the election, for the purpose of counting the soldiers' vote. If this leaves it still obligatory upon the judges to compute the home vote at their first meeting, the presumption that they did so, which results from the official action of the district board and governor, is not destroyed by any contrary proof in this case. When two or more counties compose a congressional district, the county judges do not, either at the first or second meeting, make any returns for the prothonotary or the secretary of the commonwealth. They only make out the "fair statement" for the district board provided for in section 63 of the general election law. In such cases it is the district judges who make the returns for the prothonotary and secretary of the commonwealth. If the county judges do prepare such "fair statement of the home vote" at the first meeting, they will, nevertheless, necessarily make a new statement at the second meeting, embracing both the home and military votes; and this latter only will go to the district board. While it is not shown that such a statement was not made at the first meeting of the Westmoreland county judges, it is clear to the committee that the statement made at the second meeting, and set forth on page 392 of the second book, is in substantial compliance with the law.

5. In the opinion of the committee the answer to the eleventh averment of the notice of contest is as specific and direct as the averment itself.

This examination of the contestant's case has been made without reference to the points raised by the sitting member, and gives the following results, viz:

Upon the hypothesis that the illegal returns, to which the contestant objected, were actually canvassed in favor of Mr. Dawson and the notice of contest permits the contestant to attack them, the vote will be—

Official majority for J. L. Dawson	125
Deduct for illegal returns	6
	119
Uncounted soldiers' vote, majority for S. Fuller.....	141
Deduct for illegal returns	37
	104
Majority for J. L. Dawson	15

If it is assumed that these illegal returns were not canvassed, or that the notice of contest does not permit the contestant to attack them, Mr. Dawson's majority will be twenty-one.

It is unnecessary to decide the questions raised by the sitting member, some of which go to the whole, and others to parts of the contestant's case.

The following resolution is submitted to the House :

Resolved, That Hon. John L. Dawson is entitled to retain his seat as representative in the thirty-ninth Congress from the twenty-first district of the State of Pennsylvania.

OBER, NANSON & CO.

[To accompany bill H. R. No. 173.]

JUNE 23, 1866.—Ordered to be printed.

Mr. W. B. WASHBURN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the petition and papers of Robert H. Ober, of New York city, submit the following report :

The petitioner claims to be a citizen of the United States, a resident of the city of New York, and a member of the commercial firm doing business in said city under the firm name of Ober, Nanson & Co., and in the city of New Orleans under the firm name of Ober, Atwater & Co.; that on the 18th of October, 1865, Ober, Nanson & Co. had occasion to remit sixty thousand dollars to their house in New Orleans to make payment for cotton purchased there. In order to make said remittance, the petitioner drew from the National Bank of the Republic in the city of New York sixty thousand dollars in compound interest notes of the United States of the denomination of fifty dollars each, as follows: \$5,000, letter D, Nos. 272801 to 272900 inclusive; \$5,000, letter A, Nos. 276201 to 276300 inclusive; \$5,000, letter C, Nos. 270801 to 270900 inclusive; \$5,000, letter A, Nos. 268601 to 268700 inclusive; \$5,000, letter C, Nos. 268601 to 268700 inclusive; \$5,000, letter C, Nos. 268301 to 268400 inclusive; \$5,000, letter C, Nos. 275501 to 275600 inclusive; \$5,000, letter D, Nos. 270501 to 270600 inclusive; \$5,000, letter C, Nos. 275301 to 275400 inclusive; \$5,000, letter D, Nos. 276201 to 276300 inclusive; \$5,000, letter A, Nos. 275601 to 275700 inclusive; \$5,000, letter A, Nos. 275901 to 276000 inclusive; and placed the said notes in the hands of James W. Hale, notary public of the city of New York, who sealed up the same in a package with his official seal, which package was addressed to "Ober, Atwater, & Co, New Orleans, Louisiana," and was delivered to the postmaster of New York, and duly registered and receipted for by that officer, to be despatched in the United States mail to its destination; that the mails containing said package were despatched by the steamer Republic, which was lost at sea at a point 140 miles east of Savannah, Georgia, on the 25th of October following, as appears by the affidavits of Edward Young, Sarsfield E. Young, and Wm. H. O. Moorhouse, captain, mate, and purser of the said steamship, respectively. No part of the mails were saved, nor have any part thereof been since recovered, so far as is known to the postmaster of New York, as appears by his certificate in writing, dated the 11th of January last.

The following is an analysis of the evidence :

James W. Cole, notary public, 54 Wall street, New York, certifies, under his official seal, that on the 18th of October, 1865, he placed in a parcel, sealed with his official seal, \$60,000 in fifty dollar United States compound interest notes, all dated September 1, 1865, which was directed to "Ober, Atwater & Co., New Orleans, Louisiana." This certificate describes the notes by letters

and numbers corresponding with the description in the petition. The petitioner's affidavit, sworn to before T. E. Stillman, notary public, New York city, asserts that he is a member of the commercial firm of Ober, Nanson & Co., of New York, and of Ober, Atwater & Co., New Orleans; that on the 18th day of October, 1865, the New York desired to remit to the New Orleans house \$60,000, to pay for cotton purchased there; that he drew from the "National Bank of the Republic" in New York city \$60,000 in compound interest notes of the United States, each dated September 1, 1865, and each note of the denomination of \$50 and of the numbers designated in the certificate of James W. Hale, notary public; that he caused said notes to be placed in a parcel by said notary public, sealed with his official seal, which was then directed to Ober, Atwater & Co., New Orleans, and was by him delivered at and deposited in the New York post office to be carried in the United States mails to New Orleans; that the said parcel was duly registered at the post office; that the said mail containing said letter was despatched by the steamer Republic, which was lost at sea October 25, 1865. The receipt attached to his affidavit is the original receipt of the New York postmaster for said letter, and that the certificate thereto attached is the certificate of said postmaster as to the registry of said letter, the despatch of the mail containing said letter, and the loss and non-delivery thereof.

The receipt referred to in the foregoing affidavit is as follows:

"No. 1889.—Registered letter.

"POST OFFICE, NEW YORK, *October 18, 1865.*

"Received of Ober, Nanson & Co., a letter addressed to Ober, Atwater & Co., New Orleans, Louisiana. (To which is printed the name of)

"JAMES KELLEY, *Postmaster.*"

The certificate referred to in Mr. Ober's affidavit is dated at the post office, New York, January 11, 1866, signed by James Kelley, postmaster, and certifies that a letter directed to Ober, Atwater & Co., New Orleans, Louisiana, was received in this office October 18, 1865, from Messrs. Ober, Nanson & Co., was registered and despatched in the mail forwarded the same day, per steamer Republic, which was lost at sea, no part of the mail, so far as he knew, ever having been recovered.

Affidavits of E. Young, master and commander of the steamship Republic; of Sarsfield E. Young, chief officer or mate, and of William H. O. Moorhouse, purser of the same, taken before notaries public, establish the following facts: That said vessel "sailed from New York for New Orleans on the 19th of October, 1865, having on board the United States mails; that on the 24th of October, 1865, during a severe gale of wind, the vessel sprung a leak, which continued to gain upon her until about four o'clock p. m. of the day following, when she went down at a point about 140 miles east of Savannah, Georgia, and nothing was saved on board the ship except the lives of the passengers, who were taken off in the vessel's boats and upon a raft made for that purpose; that the mails remained on board the vessel locked up between decks against the bulkhead of the ladies' cabin, and at the time the vessel went down were lost with their contents in the sea."

The affidavits of Walter Kelley and James Young, of the city of New York, and clerks in the post office having charge of registered letters, establish clearly that said package directed to Ober, Nanson & Co. was placed in the mail bag for New Orleans, which was delivered on board the steamer Republic.

The committee are of opinion that the evidence leaves no reasonable doubt in regard to the destruction of the notes described in the petition. As the securities supposed to be destroyed are in the nature of bank notes, having been issued for circulation, the committee unanimously agree that it would be unwise

and unsafe to order duplicates to be issued, no matter how clear and conclusive the evidence of destruction may be.

This it is hoped will be a satisfactory conclusion, when it is remembered that all compound interest notes have but three years to run from the date thereof.

As a reason why extreme caution should be exercised in issuing duplicates for any security alleged to have been destroyed, the committee deem it best to inform the House that there have been frequent efforts made to defraud the government of large sums under the false pretence of the destruction of bonds, treasury notes, and other certificates of indebtedness.

It is, therefore, considered expedient, in regard to compound interest notes alleged to have been destroyed, to postpone the actual payment to parties until after their maturity, which, at furthest, must be less than three years. After the maturity of such notes, if time confirms the evidence of destruction by failing to produce the notes, the Secretary of the Treasury, it is believed, will have ample authority to pay the same to the proper parties upon the production of satisfactory evidence of destruction, and requiring a sufficient bond of indemnity against their future presentation.

In view of the large amount involved in the present application, and of the exceedingly clear and irrefragable proof of destruction, the committee report a joint resolution expressly authorizing the Secretary of the Treasury to pay the notes within six months after their maturity, provided that no proof of their existence shall hereafter be presented, and provided, also, that a sufficient bond of indemnity shall be given by the parties before payment is made.

This resolution is reported not because it is deemed absolutely necessary to enable the Secretary to do what it authorizes, but because it may enable the claimants to obtain credit in carrying on their business while the notes are maturing, without which credit it is believed they will be seriously embarrassed by reason of their loss aforesaid; and the committee do not regard this as a precedent for recommending relief in cases of like character.

THE CORPORATION OF WASHINGTON CITY.

[To accompany bill H. R. No. 710.]

JUNE 23, 1866.—Ordered to be printed.

Mr. W. B. WASHBURN, chairman of the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of the city of Washington, asking the passage of an act refunding to said city thirty-seven thousand four hundred and ten dollars and sixty-one cents, (\$37,410 61,) being the alleged proportion chargeable to the United States for expenses incurred by said city in improving the streets, public grounds, &c., of said city adjacent to the property of the United States, having had the same under consideration, respectfully report :

When the city of Washington was laid out the proprietors gave to the United States 10,136 building lots with the understanding that "whatever was realized from the sale of these lots was to be spent for the joint benefit of the then joint owners, the general government and the proprietors of the soil."

Of these lots, 6,411 were sold prior to the year 1802, and yielded \$642,682 62. Of this sum, \$330,508 66 was applied towards building the Capitol, and \$240,632 87 towards the erection of a mansion for the Chief Magistrate of the United States.

Further receipts from the sale of these lots were expended as follows: twenty-five thousand dollars (\$25,000) were given to each the Columbia and Georgetown Colleges; ten thousand dollars each to the St. Vincent and Washington orphan asylums in the District of Columbia, and from time to time various sums were expended in improving the property of the general government, and in paying the salaries and expenses of the Commissioner and Superintendent of Public Buildings, and other officers and employés.

After the general government had realized a large sum from those lots, said to amount to nearly one million of dollars, Congress, recognizing the propriety of appropriating some portion of the proceeds of these lots for the improvement of the city, did, by the 15th section of an act passed May 15, 1820, provide "that the Commissioner of Public Buildings, or other person appointed to superintend the United States disbursements in the city of Washington, shall reimburse to the corporation a just proportion of any expense which may hereafter be incurred in laying open, paving, or otherwise improving any of the streets and avenues in front of or adjoining to, or which may pass through or between any of the public squares or reservations, which proportion shall be determined by the comparison of the length of the fronts of said squares or reservations (property) of the United States, on any such street or avenue, with the whole extent of the two sides thereof, (individual property,) where the like improvements shall be ordered by the corporation in front of such lots ad-

joining, or squares adjacent thereto; *and he shall defray the expenses directed by this act out of any moneys arising from the sale of city lots, and from no other fund.*" Statutes at Large, vol. 3, p. 591.

Under this act the Commissioner of Public Buildings, according to the testimony of the gentleman now filling that office, (Hon. B. B. French,) did pay the proportion of the general government for all improvements in front of the property of the United States until all the city lots were sold and their proceeds exhausted. This fund was exhausted in 1854.

Since and including the year 1854, the corporation of Washington has advanced and paid (as is claimed) for the United States, on account of the improvement embraced in the act of Congress before referred to, the sum of \$37,410 61, which remains unpaid because the fund arising from the sale of city lots, originally relied upon for payment, has been exhausted.

In considering the propriety of paying this claim two questions present themselves to the minds of the committee:

1. The accuracy and fairness of the account on which the claim is founded.
2. The duty of the United States to pay it in case its accuracy and fairness shall be established.

The first question rests principally on the testimony of Hon. B. B. French, Commissioner of Public Buildings, who states in a letter to Hon. E. C. Ingersoll, chairman of Committee for the District of Columbia, that "I have gone with great care over the items of charge made by the mayor of Washington against the United States, &c. I have done this with diagrams of the city of Washington and the mayor's vouchers before me. I find that every improvement specified as fronting on a public square or reservation is so situated; the distances are correct where stated, and where not stated I have measured them, and give them to the committee, with the prices charged, which in my opinion are very reasonable, indeed, in many instances exceedingly low." This letter is accompanied by a detailed report, giving each item of the account with the Commissioner's examination thereof, and the voucher for the same furnished by the mayor, all of which have been before the committee, and are on file with the memorial.

The committee examined the mayor and Commissioner of Public Buildings orally. In this examination the documentary evidence was confirmed, excepting as to the item for the sum of \$2,500, dated September 14, 1860, for enclosing Judiciary square, under act of Congress approved March 3, 1857.

The committee ascertained that the iron fence enclosing Judiciary square on three sides was furnished by the United States. It was an old fence removed from the Capitol grounds, and its value, in the opinion of the committee, is equal to the equitable proportion chargeable to the United States for enclosing Judiciary square.

The committee are not familiar with the history of congressional legislation in regard to the District of Columbia; but so far as they have been able to inform themselves, the account on which the memorialist rests her claim, except as before specified, is accurate.

2d. Is it the duty of the United States to pay the claim?

By an act of Congress approved May 5, A. D. 1864, provision is made for paying the just proportion of the United States for all improvements to the streets, avenues, &c., in the city of Washington. This act seems to recognize the equitable liability of the United States to pay such proportion of these improvements for the health, convenience, and comfort of the inhabitants of the city as the property of the United States shall bear to the property of individual owners. Under this law, no similar difficulty will hereafter be likely to arise.

The act of May 15, 1820, recognized the same principle; but having provided a specific fund to meet the liability of the United States, and this fund having been exhausted, it becomes necessary for the city to have assistance by legisla-

tion before she can be repaid what she has expended for the benefit of the property of the United States.

The committee will also remark that Hon. James Harlan, Secretary of the Department of the Interior, in his last annual report admits the validity of this claim and recommends its payment.

It must be remembered that the account on which this claim rests was made under the act of 1820, after the fund arising from the sale of city lots had been exhausted, and prior to May 15, 1864, when the present law was approved, which provides for all similar claims arising after its passage. The act of 1864 is entitled "An act to *amend* the act of May 15, 1820."

Under these circumstances, and in view of the general liberality of the United States in aiding improvements in the city of Washington, the committee have concluded to recommend the payment of the claim of the memorialist, *without interest, after deducting the item of \$5,439 27 for improving Judiciary square,* and for enclosing public reservations. They therefore report a bill allowing \$31,971 34.

JOHN R. BECKLEY.

[To accompany joint resolution H. R. No. 174.]

JUNE 23, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred the petition of John R. Beckley, submit the following report :

That it satisfactorily appears, from the evidence before the committee, that the petitioner, John R. Beckley, executed bonds, and became bound to the United States, as mail contractor, to transport the mails on routes No. 9,634 and No. 9,619, in the State of Kentucky, for the term of four years, commencing the first day of April, 1862, and terminating on the 30th day of June, 1866. The high character, loyalty, integrity, and vigilance of said Beckley are fully established. It also appears that all the agents employed by him in transporting the mails were loyal, honest, and faithful men; that portions of his routes were exposed to frequent incursions by confederate forces and guerillas; that he was compelled to incur great risks by endeavoring to transport the mails over said routes or submit to fines and forfeitures for his failures; and that he has performed his contract faithfully, and to the utmost extent that vigilance, energy, and industry could perform it. It also appears that said Beckley, while endeavoring to perform his contract on said routes, and without fault or negligence on the part of himself or agents, was robbed by confederate rebels and guerillas of horses and stage-coaches used by him at the time in transporting the mails, as set forth in his petition and claim, and that said horses and coaches were of the value claimed by him; and that all said property was lost by him by reason of the failure of the government to protect him against the public enemies of the country while performing the service required of him by the government. All the foregoing facts are fully established by numerous witnesses, who are proven to be men of loyalty and credibility.

The committee report herewith a joint resolution for the relief of the petitioner and recommend its passage.

TULLER AND FISHER.

[To accompany H. Res. No. 175.]

JUNE 23, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the petition and proofs of Messrs. Tuller and Fisher, mail contractors, of the State of Missouri, having had the same under consideration, report :

That in the month of July, 1862, Owen Tuller and Ulysses E. Fisher, highly responsible business men, contracted to carry the mail on route No. 10648, from Rolla to Springfield, in the State of Missouri, and immediately entered upon the duty of executing their contract according to its terms. They met at the outset with serious loss, as well as great difficulty, from the country along the route being infested with armed rebels acting as soldiers of the so-called late southern confederacy. During the fall and winter seasons of 1862-'63 they were contemplating the necessity of abandoning their contract, and finally determined upon doing so. At this period, and at least as early as the first of March, 1863, Colonel S. N. Boyd, then a military officer in the volunteer service of the United States, and since a member of this house from Missouri, in conjunction with other citizens, applied to the commanding officer of that military department, and obtained an order taking possession of their horses, wagons, stages, harness, forage—of all their means of transportation and stores used in the mail service on said route, and applied the same to military use and purposes of the government. The affidavits of the postmasters on this route, as well as that of agents, prove the seizure of the stock, and the occupation of the route by the United States military forces at this date. The statements of General McNeil and Major Fischer confirm the fact of the existence of military impressment and occupancy while they were in command on the line of said route.

A review of the evidence submitted to the committee leaves no room to doubt the absolute impressment, possession, and use, for military purposes, by the United States authorities, of the property of the claimants.

The evidence of George M. Tuller, of Indiana, agent of claimants, on the route, with Headquarters at Rolla, is, that "from the commencement of his service, in March, 1863, to February, 1864, he was ordered by Messrs. Tuller and Fisher to obey all orders of the military officers in command on the route, and that he did so obey, never starting the coaches and mail until ordered, and starting promptly when ordered by the proper military authority, and that the route was under the military control previous to his going on duty as agent. That he passed over the route at least once a week, and that during the time he was so employed severe losses were sustained by claimants by the capture and destruction of said stage property by confederate soldiers; that a low price for the horses captured would be \$150 each; that the rebels always took the best stock;

that escorts frequently became alarmed and run off, and that some of the property was taken after a fight, and that claimants would have abandoned the route in the fall of 1862, had they not been forced to remain by the military authorities.

William C. York, keeper of the stage-stand at York's station, between Rolla and Springfield, states that during the years 1863 and 1864 he was in charge of the stand, and that during the whole time the operations of claimants were governed and controlled by military authority; that he and all employés were ordered by claimants to obey the commands of the military authorities; that such commands were implicitly obeyed by all; that the stages never started except when so ordered; that without military orders they did nothing; that during this period the station was guarded by United States troops, with the exception of a short time in September, 1864, when the troops were ordered to another point on special duty; that during this absence the confederates, on the 13th of September, made a raid on the stage-stand and captured four mares, used for stage purposes only; that it was a superior team, worth, at least, \$200 each; that to his own personal knowledge it was the avowed intention of claimants to abandon the route and to give up their contract as mail carriers, on account of their losses, the dangerous condition of that part of the country, and the insecurity of life and property, had they not been deterred and prevented by the military authorities, in the fall of 1862, from doing so; that the military took possession and control of horses, coaches, forage, and all means of transportation and stores.

The Hon. S. H. Boyd, late colonel of the twenty-fourth regiment Missouri volunteers, states that such heavy losses had been suffered by claimants through depredations committed by the enemy, that they were about abandoning their contract, which would have inflicted so heavy a loss on the community, when he and other citizens waited upon the military commanders and urged them to take military possession of the entire stock of claimants, and to continue the transportation of the mails under military control and escort; and that such order was given, and military posts at once established along the line for the protection of the mails and property; and that, from the time of the impressment, the time and place of starting was governed entirely by the orders of the commanding officers in charge, and that the owners and other employés were compelled to obey such orders. That, but for such prompt impressment, he knows that claimants would have discontinued said mail service, which, in his opinion, would have been a great public calamity, and nearly as great a hardship as the abandonment of that portion of the country, as well as large portions of Arkansas, by the federal forces. It would have been especially hard upon the military service, as there was no other way of transporting mail matter through this region. He further states that heavy and serious losses have occurred to the claimants in the capture of their stock by the enemy while thus controlled by the army.

Waldeman Fischer, late major 5th Missouri cavalry, states that he was in command of the post at Waynesville, Missouri, on the route between Springfield and Rolla during part of the years 1863 and 1864; that during that time he was ordered to receive the mails and to retain them until a suitable escort could be furnished; that the horses, stages, and all the stock on the route belonging to claimants were under the control and management of the military authorities; that the claimants rendered all the assistance in their power to aid the government during this time; that they suffered heavy losses from the capture of their property by armed rebels while then controlled and directed by the military authority; that he knows that unless possession had been taken of the route and the stage property, claimants would have discontinued the mail service and would have withdrawn their stock from the country. The horses, coaches, and means of transportation of claimants were of the best quality for that service.

The committee invite special attention to the statement of Brigadier General John McNeil, who was in command at Springfield, Missouri, from the 9th of July to 31st of October, 1863, in which he clearly states the great necessity for the military service to continue the transportation of its mails over this route, as all the troops in southern and southwestern Arkansas received and sent their mails by this route; that the military authority caused the impressment, and took possession of the coaches, horses, and other property of claimants into the military service, knowing that claimants, from severe losses by armed rebels, were about to abandon their contract and to withdraw their entire stock from that country; that the property was under military control when he arrived and took command, and he continued it during his term; that even after he took command the mails failed so frequently between Rolla and Springfield, and communication was cut off so repeatedly by the enemy, that he offered a force from Springfield to bring the mails through; that if the military authorities had not seized the property, or permitted the claimants to take it out of the country, it could not be replaced and the mails could not have been transported, and that during the term of his command the losses of claimants along the route by capture of their stock were large.

The proof shows that claimants lost seventy-nine horses, some valuable harness, and other property, amounting in all, in the opinion of the committee, at a reasonably fair valuation, to twelve thousand and five hundred dollars.

The seizure, impressment, and control of the property of the claimants by the military authority of the government are so clearly established that the committee recommend the relief sought by the claimants, and for that object report the accompanying joint resolution appropriating the sum of twelve thousand dollars, or so much thereof as may be found necessary for the payment of this claim.

BOYD vs. KELSO.

JUNE 25, 1866.—Ordered to be printed.

Mr. UPSON, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the memorial of S. H. Boyd, contesting the right of the Hon. John R. Kelso to a seat in the thirty-ninth Congress as a representative from the fourth congressional district of Missouri, having considered the same, and the evidence submitted in reference thereto, make the following report :

The election here contested was held on the 8th day of November, A. D. 1864. It appears that the said fourth district is composed of some twenty-one counties. The contestant, on the 9th day of January, A. D. 1865, served on the sitting member a notice (pages 1, 2, and 3, Mis. Doc. No. 93) of intention to contest his right to the seat as a representative of the said fourth congressional district, and setting forth the grounds of contest.

The said specifications are very general, vague, and indefinite, but, so far as can be gathered from them, they raise some objections to the regularity of the election, and the legality of some of the votes at some of the election precincts in the counties of Barry, McDonald, Newton, Jasper, Dade, and Polk, which are included in said district, but state no objections to the election or the votes cast at the election precincts in any of the other counties of the district. The vote, however, of Captain Stephen Julian's company, of the 2d regiment Missouri artillery, stationed at St. Louis, was also objected to or questioned in said notice.

The sitting member filed his answer to said notice of contest, (pages 130, 131, and 132, Mis. Doc. 92,) denying the several specifications and allegations of contestant, and alleging certain objections to the election, and to the legality of the votes cast for contestant at various precincts in different counties of the district.

A further formal notice of contest appears on page 8, Mis. Doc. 92, purporting to have been given by the contestant, and accompanied by a certificate of a deputy sheriff, setting forth that he served it on the wife of the contestee on the 21st day of March, 1865, of which notice, however, no other proof of service appears, and no notice seems to have been taken of it by the contestee, and he, on the hearing, objected to its consideration in the case, it not having been given within the time prescribed by the act of February, 1851; and also objected to the 1st, 2d, 9th, 10th, 11th, and 12th specifications in the original notice of contest, for insufficiency in not specifying with particularity the grounds of contest, as required by said act. But as no objection to the sufficiency of the first notice appears to have been taken in the answer of the contestee, it is probable that, according to the precedents in such cases, the objection to the sufficiency of the first notice, so far as the contestee is concerned, may be considered to have been waived.

The second notice not having been given in time, and not appearing by any

proof to have been served as required by law had it been given in time, and no application having been made or leave granted to the contestant to amend his notice after the expiration of the time fixed by the law for serving the same on the contestee, it is not properly in the case, and cannot therefore be considered in this investigation; though, from a casual examination of its contents, the committee think that if it had been admitted and considered, it would not probably have materially affected the result.

The contestant not having raised any objection in his notice to the election at any of the precincts in the several counties of the district, other than in the counties of Barry, Macdonald, Newton, Jasper, Dade, and Polk, any evidence he may have submitted as to the votes cast at the several election precincts in such other counties is manifestly irrelevant and inadmissible; and the contestee having also objected to such evidence on that account, it is not considered in the case. The evidence, however, is in itself very defective, so that its rejection cannot work any serious prejudice. The sitting member having the certificate of election, *prima facie*, has been legally elected, and it is for the contestant to overcome this *prima facie* right, invalidate the contestee's right to the seat, and show himself entitled thereto.

There is no evidence in this case before the committee to show what votes or returns were included in the final canvass in the office of the secretary of state (Rev. Stat. Mo., vol. 1, page 702, sec. 30) of the votes cast for representative in Congress in this congressional district.

The abstract of the vote cast in the several counties of the district, presented by the contestant, (page 17, Mis. Doc. 92,) on its face purports to give for Boyd 3,888 votes; for Kelso, 3,972; for M. J. Hubble, 400; and for P. B. Larrimore, 4; making a plurality for Kelso of only 84 votes; but the sitting member claims to have this tabular statement corrected by the preceding certified returns furnished by contestant from the office of the secretary of state, (pages 9 to 17, Mis. Doc. No. 92,) which give no returns of votes from Ozark county, and also none from Douglas county alone, but the certified return from Douglas county (page 9, Mis. Doc. 92) shows, as he alleges, that it purports to be made up of votes from Douglas and Ozark counties combined, and that under the laws of Missouri (Rev. Stat. Mo., vol. 1, page 701, sec. 25) the clerk of Douglas county could not certify any abstract or return of votes except that of Douglas county, and that it being impossible to correct the return by reason of the absence of any separate certified return of the vote for either Ozark county or Douglas county, the entire vote claimed for both counties should be rejected.

The said tabular statement (page 17, Mis. Doc. 92) gives from Ozark county 34 votes for Boyd and none for Kelso, and from Douglas 141 votes for Boyd and 53 for Kelso; and rejecting these, on the face of the papers furnished by contestant, Kelso's plurality would be 206. Without carefully scanning or deciding upon the sufficiency of the specifications in contestant's notice under the law of 1851, further than we have before stated, (the contestee in his answer not having raised any objection to the sufficiency of the same,) the committee have proceeded to examine the evidence submitted to see if that made out any case for contestant as alleged in said notice. The only witnesses produced by the contestant, as to the election at King's Prairie precinct, in Barry county, are John Goodnight (page 18) and Hood Tate, (page 19.) Each testifies that several persons voted there, who were not residents of the township, without taking the oath required in such cases, (1 Rev. Stat. Mo., page 704, sec. 43;) and that several soldiers voted, but it does not appear for whom any of these persons voted, nor but that these soldiers were all lawful voters. What purports to be a copy of the poll-book for this precinct, (pages 41, 42, and 43, Mis. Doc. 92,) seems also to be in proper form; and from it, it appears that the whole number of persons voting there was fifty-one, while only forty-two votes are returned for representative in Congress, viz: thirty-nine for Kelso, and three for Boyd.

William Robison and S. H. Carlile testify (pages 20 and 21, Mis. Doc. 92) as to the election at Cassville or Flatbush precinct, in this county.

Both testify that some soldiers and three other persons, who were non-residents of the county, voted there, but do not say for whom they voted, nor that the soldiers or other persons were not lawful voters. From what is claimed to be a copy of the poll-book for this precinct, (page 50,) though not in the form now prescribed by law, it would seem, if this copy is evidence, that the three non-residents of the county, Jenkins, Hickok, and Nellis, voted for Kelso, but it does not appear but that they were residents of the congressional district, and lawful voters here, under Revised Statutes of Missouri, vol. 1, page 704, sec. 43. Carlile says that, in casting up the vote of Barry county, in making the county canvass, the poll-book of no township was rejected for illegality or informality. John Ray and Enoch Williams testify (page 21) as to the election at Crane Creek.

Ray, who was county clerk, only says that no ballots were returned from Crane Creek, and that the poll-book returned from that township "had the vote of each voter extended opposite the name of said voter, after the manner of a *viva voce* poll-book," and that no poll-book was rejected in casting up the vote of the county.

Williams testifies that he voted at Crane Creek, and did not take any oath at all before voting, and that he saw others who voted in the like manner, but gives no names. Says he staid there about an hour, but does say for whom he voted, nor for whom the others voted; but speaks of having his ticket in his hand when he voted, and of telling the judges of election for whom he voted, but does not say whether he handed his ticket to the judges of election or not, and could not say whether he saw others voting as he did or not.

He shows that he had a ballot when he voted. What is claimed to be the copy of the poll-book for this precinct (page 46) is in the same form as the one alluded to, purporting to be for Flatbush, and, if admissible as evidence for any such purpose, gives Williams's name as voting for Kelso. This is all the testimony of witnesses as to Crane Creek, although it is apparent that the judges of election and many others of the voters there might and would have been called and examined by the contestant if their testimony would have shown the election to have been *viva voce*, or without oath, or invalid for any cause; and the committee do not consider this evidence sufficiently clear, satisfactory, and conclusive, under the circumstances, to warrant them in setting aside the election at Crane Creek; and that as to the other precincts in Barry county, to which they have alluded, the testimony is too defective, and fails to make out a case to set aside the elections there.

The testimony of Long, McGraw, and Rice, (pages 26, 27, and 28,) is but hearsay and is inadmissible, and is also mostly in regard to counties not objected to by contestant in his notice of contest.

Bulgin, Vitilow, Breck, and Bowers testify (pages 30 and 31, Doc. 92) as to the election at Cave Spring, in Jasper county. Contestant claims that the election was *viva voce*, but the witnesses swear that it was by ballot, although they admit, as contestant alleges, that the judges of election did not go to Carthage, which contestant claims is the county seat, to cast up the vote of the county.

Carthage was destroyed in the late rebellion and the organization of the county somewhat broken up, and the contestee claims that the courts for the county have since been held at Cave Spring, and that under the ordinance of the Missouri State convention of June 13, 1862, the election was properly held.

It is not claimed by contestant that the voters were not competent and legally qualified, nor that the vote is wrongly given, but that it was irregularly canvassed and returned, and on that account should be rejected.

On the slight showing made, and under all the circumstances under which the

election was held, the committee do not feel authorized to reject the vote of this county. Some further considerations tending to this result will also be given hereafter in this report.

Contestant claims that the vote of McDonald county should be rejected on a defectively certified return, or part of a return, for said county, presented by him on page 16; and he also claims and insists that the county had been disorganized in consequence of the war. On this showing alone the committee do not see sufficient evidence for rejecting the vote.

The objection urged by contestant to the election in Dade county seems confined in the evidence to company I, 7th provisional regiment, East Missouri State militia, contestant claiming that the copy of poll-book (pages 32, 33, and 34) shows the original to have been in form a citizens' poll-book, and that the caption does not show where the vote was cast.

The law of Missouri allows the soldiers to vote either *viva voce* or by ballot, and if they voted in this instance by ballot there seems to be no valid objection to the form of the poll-book, even if it is properly in evidence. According to it thirty-one persons voted, and only twenty-nine votes are returned as cast for representative in Congress. But if the objections urged against it by contestant were valid, nothing legally appears to show that this particular vote was ever counted or returned for Dade county. A clerk's certificate is not evidence of that fact.

If abstracts of votes certified by the clerk of a county or secretary of state are evidence, then the abstract on page 158 for Polk county shows a very different aggregate vote there from the abstract on page 17, and would increase contestee's plurality seventeen votes, and show that certain soldiers' votes objected to by contestant as illegal were not counted for contestee.

The evidence of S. H. Julian (page 24) as to irregularities and illegalities in the vote of battery I, second Missouri light artillery, has reference almost wholly to the ages of some members of the battery whom he alleges voted, but his information he admits is wholly derived from a copy of a descriptive book or roll of the company, (page 111;) and his knowledge that they voted and for whom they voted he obtained from a copy of the poll-book, but no such copy of said poll-book is given in evidence, and the contestant himself expressly objects (page 26) to all questions to and answers of this witness relative to the statements of said poll-books, on the ground that the poll-book is the best evidence of its own contents, and this objection is fatal to his own testimony so far as this witness is concerned. The copies of poll-books claimed by contestant to be of this company, (pages 80 and 129,) do not contain the names of any of the men alleged by Julian to be minors and to have voted at said election for the sitting member, and if his testimony were received in full, his cross-examination would show that several minors voted for the contestant.

But the evidence certified from the office of the secretary of state, as well as from the offices of the several county clerks, is very defective both in substance and in arithmetication, and is also very unsatisfactory and inconclusive. The secretary of state certifies (page 9) that the pages sent up "contain a true and correct copy or transcript of the election returns" made to his office so far as said returns relate to the election of a representative from said fourth congressional district, and instances what is omitted, and further adds in his said certificate "that there are on file in this office the returns from several soldiers' voting places, which were not counted in casting up the vote, from illegality and insufficiency, and which are not contained in the following pages." It would seem from this that the secretary of state, either with or without the consent of the contestant, had concluded to settle not only the question as to what portion of the returns related to the election of representative in Congress from this district, but also as to the illegality and insufficiency of certain of the returns of the soldiers' vote returned

for said district, and thus to relieve the committee and the House from the labor of investigating and passing upon them; but when the contestant thus shows that only part of the election returns are certified to the House, it is apparent that no presumption in his favor can arise as to those returns or parts of returns that are omitted; and it is also a matter of serious question whether evidence thus defectively certified should be received or considered.

The committee are asked by the contestant to presume, first, that he has brought before the committee all the returns of votes cast for representative in Congress in said district, as made to the secretary of state, or to the county clerks of the respective counties therein, and then to presume that all these votes so certified to the House were counted in the final canvass. The certificate of the secretary of state (as also of some of the clerks) we have seen is defective, and if evidence for any purpose, shows that all the returns are not certified to the House, and that the returns that are certified are only such portions of each return as the secretary considered had reference to the election of representative in Congress in the fourth district. The statement in the certificate of the secretary of state or of a county clerk appended, and authenticating a copy of a return that he did or did not count or include certain votes in computing the congressional vote, or that he did or did not certify a certain portion of the votes to some other officer, is not of itself evidence of the fact, and is no part of the authentication of the papers which he is empowered by law to make, and the sitting member objected, on the hearing, to the admission or consideration of this kind of certificate as evidence to prove such independent facts.

On these points the contestant's evidence is defective, and the committee are not authorized in the face of such certificates to presume that all the returns of the votes cast have been produced by the contestant, but a fair presumption to the contrary arises; neither are they to presume that the canvassers illegally declared Mr. Kelso elected in the absence of evidence or proofs on the part of the contestant to establish that fact.

Under these circumstances the committee do not feel called upon to decide upon the various questions raised by the contestant as to the regularity or sufficiency of poll-books and returns, imperfect and defectively certified copies only of which appear to have been laid before them by the contestant, and no proof being produced to show that the votes questioned, even if defectively returned or illegal, were included in the final canvass; and in many instances no specifications referring to such returns or poll-books having been made in contestant's notice of contest.

The contestant certainly cannot claim that any presumption can arise that the canvassers counted in favor of the sitting member votes that were irregularly and defectively returned, and were illegal on their face. It is unnecessary to consider the points raised by the contestee in his defence, or his evidence, further. The committee therefore recommend the adoption of the following resolution:

Resolved, That John R. Kelso is entitled to retain his seat in this House as a representative in the 39th Congress from the fourth congressional district of Missouri.

REPORT

The Commission on the Public Health and Safety of the Nation, created by the President in 1964, has the honor to submit to you this report on its findings and recommendations. The Commission was established to study the public health and safety problems of the Nation and to make recommendations for their solution. It was organized in 1964 and has since that time been engaged in a comprehensive study of the public health and safety problems of the Nation. The Commission has held numerous public hearings and has received many suggestions from the public. It has also conducted extensive research and has held many consultations with experts in the field. The Commission believes that the public health and safety of the Nation are of the utmost importance and that it is the duty of the Commission to make recommendations for their improvement. The Commission believes that the public health and safety of the Nation can be improved by the adoption of certain measures. These measures are set forth in the recommendations of the Commission. The Commission believes that these measures are necessary for the improvement of the public health and safety of the Nation. The Commission believes that the public health and safety of the Nation are of the utmost importance and that it is the duty of the Commission to make recommendations for their improvement. The Commission believes that the public health and safety of the Nation can be improved by the adoption of certain measures. These measures are set forth in the recommendations of the Commission. The Commission believes that these measures are necessary for the improvement of the public health and safety of the Nation.

VIRGINIA LAND WARRANTS.

[To accompany bill H. R. No. 169.]

JUNE 30, 1866.—Ordered to be printed.

Mr. ECKLEY, from the Committee on the Public Lands, made the following

REPORT.

The Committee on the Public Lands, to whom were referred House bill No. 168, and also the petition of citizens of Ohio and Kentucky, asking the further time of — years to locate land warrants issued by the State of Virginia to her marines, officers, and soldiers on the continental line in the revolutionary war, have had the same under consideration, and now report :

The bill provides for extending the time for the period of five years in which to locate the warrants on lands in the Virginia military district in the State of Ohio.

The State of Virginia, by an act of the legislature in 1784, ceded all her lands in the Northwestern Territory to the United States, reserving that district of country lying and being between the Scioto and Little Miami rivers and north of the Greenville treaty line, as bounty to her marines and officers and soldiers who served on the continental line in the war of the Revolution; which cession was accepted by the United States by an act of Congress, and the United States took possession of said lands in trust for the government of the United States, and caused the same to be surveyed and the boundaries to be fixed and determined, which boundaries were fixed and permanently established by acts of Congress of 1812 and 1818.

In 1830 Congress passed another act authorizing scrip to issue for any land then unoccupied and which was then for sale, in lieu of any warrant issued as aforesaid which was not located, and which grant of scrip was by an act of Congress in 1852 made a finality; to which act of Congress the State of Virginia in 1852 gave its assent.

That, in 1839, said warrants were located on lands outside of said reserved district, but which lands had been sold by the United States between 1804 and 1833, for which the Commissioner of the General Land Office refused to issue patents, &c.

That the holders of said warrants then presented their claim to Congress, and in 1840 it received a favorable report in the House, but failed in the Senate. Again, at the 1st session of the 27th Congress, also at the 2d session of said Congress, and also at the 30th Congress, said claim was severally adversely reported upon in the House; and that in the 33d Congress, it was introduced in the Senate and reported on adversely. The Journals of the Senate and House are referred to for these several reports.

That said claim was then withdrawn from Congress and preferred in the Court of Claims; the case of Cadwallader Wallace and others against the United States, instituted in said court, in which the claimants sought to recover the sum of two hundred thousand dollars, which cause came on to be

heard in said court, and, after full hearing in 1865, was decided against said claimants by said court.

That after the claimants have failed in the court, they come back to Congress and ask the passage of said bill.

That said tract of land, reserved as aforesaid, is among the earliest settled portion of Ohio, and is and has been occupied by settlers for many years, who have made valuable improvements on the same, and whose titles have been confirmed and quieted by the legislation of the State of Ohio, and the location of land warrants on nearly fifty thousand acres of land in said district could not but produce great injustice to the occupants of said land, who hold it, as they believe, under an indisputable title, honestly and in good faith.

The United States having reserved this tract of land in trust, was bound to faithfully execute said trust. But when to execute it? Was the United States to hold it forever? or was there a time limited in which these warrants were to be located? These are all answered by the previous action of Congress, and by the decision of the Court of Claims. They were bound to locate their warrants within a reasonable time. If they failed to so locate their warrants within a reasonable time, the United States had a right to sell said land or hold it for sale, and, acting upon that well-settled principle, did sell, between 1804 and 1830, those lands, amounting to more than seventy-five thousand dollars. Therefore your committee, having given this their careful examination, are forced to the conclusion that the relief sought by this bill ought not be granted. They therefore recommend that said bill be indefinitely postponed, and that the committee be discharged from the further consideration of the subject.

BREACH OF PRIVILEGE.

JULY 2, 1866.—Laid on the table and ordered to be printed.

Mr. SPALDING, from the Select Committee on Breach of Privilege, in the matter of Hon. Lovell H. Rousseau, of Kentucky, and Hon. Josiah B. Grinnell, of Iowa, made the following

R E P O R T .

The committee appointed by the House to investigate and report upon the facts in the case of the assault committed by the Hon. Mr. Rousseau, of Kentucky, upon the person of the Hon. Mr. Grinnell, of Iowa, have attended to that duty, and respectfully report :

That at the close of the session of June 14, while passing from the House through the portico of the east front of the Capitol, Mr. Grinnell, of Iowa, was arrested by Mr. Rousseau, of Kentucky, who stated to him that he had waited four days for an apology for his conduct towards him in the House. Not receiving from Mr. Grinnell a satisfactory reply, Mr. Rousseau immediately struck Mr. Grinnell several blows, with a small cane, upon the face and head until the stick was broken. The time occupied in this transaction was but momentary. The weapon used was a small ratan cane, with iron end. There were from six to ten blows given. No resistance was made by Mr. Grinnell, and no serious personal injury resulted from the assault. After some words the parties separated, without the direct interference of any person. There were fifteen or twenty persons present upon the portico at the time of the assault, a part of whom were detained there by a shower of rain falling at the moment. No other member of the House was present than the parties named; no person was present as a friend or in company with Mr. Grinnell; he was without arms or weapon of any kind. Mr. Rousseau had no weapon except that which has been described.

Three persons were present as friends of Mr. Rousseau; the first, on account of information received from Mr. Rousseau that a personal assault was possible, if not probable; the second, on account of a suggestion or call from the first; and the third followed Mr. Rousseau to the portico, on account of his excited appearance and manner when passing through the rotundo. It does not appear that any one of these parties was informed of his intended action except the first. These friends of Mr. Rousseau were all armed with loaded revolver or pistol. The first had taken his weapon with him on the day of the affair, in expectation of what might occur. The second was armed with a pistol which he had carried upon his person for a long time, in accordance with the general custom of the country in which he lived, where men from the same neighborhood had served in the Union or the rebel armies. The third was armed with a pistol which it was generally his custom to carry, and which he had upon his person on that day without any reference to the difficulty which occurred. These parties had all served in the Union army during the war with General Rousseau. None of them had their arms with them at the time of the investigation. It was admitted by them that, in the event of any interference on the part of outside parties, they should have taken part in the contest. No interference being offered, they took no part in the affair, except to advise Mr. Rousseau to withdraw at the close.

No doubt exists as to the cause or purpose of the assault. It was in consequence of words spoken in debate by Mr. Grinnell, and the object was to disgrace him as a member of the House of Representatives. This was stated by Mr. Rousseau at the time of the assault, and was understood and admitted by one or more of the friends of Mr. Rousseau, as well as by Mr. Rousseau himself, to the committee during the investigation, as the only cause and purpose of the assault.

On the part of Mr. Rousseau it was alleged that his character and conduct as an officer of the Union army had been assailed by Mr. Grinnell with epithets and aspersions to which no man could be expected or required to submit; and that as the House had failed to protect him, upon his appeal, in his privileges as a member, he felt it to be his right to vindicate himself and the people he represented.

On the part of Mr. Grinnell it was alleged that his character had been publicly assailed by Mr. Rousseau on the floor of the House and elsewhere, in such manner as to provoke and justify the remarks he had made.

Both parties presented official reports from the Globe of that portion of the debates connected with this subject, upon which the judgment of the committee was requested. This part of the debate is herewith presented with other evidence in this case.

Nothing occurred in the course of the inquiry to indicate that Mr. Grinnell was actuated in the slightest degree by malice or personal feeling towards Mr. Rousseau.

Nothing appeared on the part of Mr. Rousseau, apart from the transaction which the committee was instructed to investigate, to impeach his character as a member of the House or as an officer of the army. Official evidence, which, when presented, the committee could not refuse to receive, showed that he had steadily adhered to the cause of the government in the period of its greatest peril; that he had been among those citizens who, against the influence of cherished friends and kindred, had honorably resisted the violent and treasonable efforts to sever the bonds of the Union, and firmly held the State of Kentucky to its duty, and that his services in the army were alike honorable to himself, his State, and the country. Without considering in any manner the question of provocation or justification presented in this case, the committee has been compelled to decide, after mature deliberation, that no provocation can justify a resort to violence against the person of a member of this House. In enumerating the privileges of its members the Constitution expressly declares that "for any speech or debate in either house they shall not be questioned in any other place." (Article I, section vi.)

The theory upon which parliamentary assemblies are founded is that of the inviolability of the person of the representative. No tribunal or officer of the government is authorized, except in cases of treason, felony, or breaches of the peace, to call him to an account for the part taken in the transactions of the assembly of which he is a member. The existence and authority of legislative assemblies depend upon the recognition of this fundamental law. This is due not less to the dignity of the assembly and the rights of its members than to the people they represent; an act of violence against a representative is an act of insurrection against the people he represents. It cannot be justified by any delinquency or wrong on the part of the representative, which they have not authorized, and for which they ought not to be held responsible or deprived of the rights of representation.

These prerogatives of the representative are so much a matter of public concern that they cannot be taken away by any act of the assembly of which he is a member except by an order of expulsion or its equivalent, or annulled by the legislature; and so far as they secure to him the right of attendance, it is not in the power of the representative to waive or surrender them. In his

privileges are involved the right of representation of the people, and upon their proper recognition the existence of representative government and of political liberty depends.

The committee is therefore of opinion that in the assault upon the person of the Hon. Mr. Grinnell, of Iowa, on account of words spoken in debate, and for the acknowledged purpose of disgracing him as a member of the House, and thereby depriving him of his due and just influence and power as a member of this House, the Hon. Mr. Rousseau, of Kentucky, committed an inexcusable breach of the privileges of this House, as well as of the people represented by Mr. Grinnell, for which no provocation or justification can be pleaded, and which merits the strongest condemnation that it is in the power of the House to impose. In forming this opinion the committee has not overlooked the circumstances out of which the assault originated, and which have been pleaded as ground of justifiable provocation. The imputation of cowardice in an officer of the army is an offence to which no reply can be made.

It is difficult to prove the existence of personal courage. A man's character in this respect must be in a great degree a matter of opinion. When it becomes necessary to make an imputation of this character against a member of the House, it should be done with the formality of a charge of official misconduct, accompanied by a statement of the facts upon which it is based, and by which it is to be inferred or proved. The committee is unable to find in this case any justification for an imputation of this character against the representative from Kentucky. His military services were voluntarily rendered in favor of the government under which the House holds all its privileges and powers, against a large portion of the people of his own State as well as against his immediate fellow-citizens, relatives, and friends. If anything would justify a resort to violence, which the committee denies, it might, perhaps, be found in an imputation of this kind. The committee therefore recommends that the House express its disapproval of the personal reflection of the Hon. Mr. Grinnell, of Iowa, upon the character of the Hon. Mr. Rousseau as a violation of the orders of the House, and a breach of the privileges of its members.

It appears from the evidence that three persons were present with arms at the time of the assault; one of them at least had been informed of its probable occurrence, and all of them expressed to the committee their intention to take part in the affair in the event of any unexpected interference on the part of outside parties on either side. It appears to the committee, after mature deliberation, that inasmuch as this occurred in a premeditated and actual assault upon the person of a member of this House, such presence and participation was an offence against the public peace and the privileges of this House which ought not to pass unnoticed. It is therefore recommended that these parties be brought to the bar of the House and held subject to its order.

In these recommendations the committee has performed the duty with which it was charged. But it is, perhaps, proper, in addition to what has been said, to call the attention of the House to the necessity of enforcing the rules of the House against personalities in debate. These rules are founded in natural reason and right, as well as in ancient parliamentary law. It is the duty of every member of the House to see that they are observed. This depends more upon the temper and purpose of the House than upon its officers.

If the members of the House regard with indifference the violation of the rules of debate in this connexion, the dignity of the House, the privileges of its members, and the rights of the people they represent cannot be maintained. Upon a full and careful consideration of all the facts in this case, the committee reports the following resolutions:

Resolved, That the Hon. Lovell H. Rousseau, a representative from Kentucky, by committing an assault upon the person of the Hon. J. B. Grinnell, a representative from the State of Iowa, for words spoken in debate,

has justly forfeited his privileges as a member of this House, and is hereby expelled.

Resolved, That the personal reflections made by Mr. Grinnell, a representative from the State of Iowa, in presence of the House, upon the character of Mr. Rousseau, a representative from the State of Kentucky, were in violation of the rules regulating debate and the privileges of its members founded thereon, and merit the disapproval of the House,

Resolved, That Charles D. Pennybaker of Kentucky, L. B. Grigsby of Kentucky, and John S. McGrew of Ohio, by their presence and participation in a premeditated personal assault between Hon. Mr. Rousseau, of Kentucky, and Hon. Mr. Grinnell, of Iowa, on account of words spoken in debate, in which the persons if not the lives of members of this House were imperilled, were guilty of a violation of its privileges, and they are hereby ordered to be brought to the bar of this House to answer for their contempt of its privileges.

R. P. SPALDING.

N. P. BANKS.

M. RUSSELL THAYER.

VIEWES OF THE MINORITY.

The undersigned concur with the majority of the committee in holding that General Rousseau, in his assault upon Mr. Grinnell, was guilty of a violation of the privileges of this House, for which there was no justification.

But, considering the very gross provocation received by General Rousseau, the wanton and unjust imputations cast upon his military character and services, the failure of the House to protect him against an assault unwarrantable in itself and a violation of the privileges of the House, and the absence of any intention to inflict severe bodily injury upon Mr. Grinnell, they are of opinion that expulsion is a punishment more severe than justice or the public interest requires.

They therefore recommend the adoption of the following resolution instead of the first of the series reported by the committee:

Resolved, That Hon. Lovell H. Rousseau be summoned to the bar of the House, and be there publicly reprimanded by the Speaker for the violation of the rights and privileges of the House, of which he was guilty in the personal assault committed by him upon Hon. J. B. Grinnell for words spoken in debate.

In recommending the adoption of the other resolutions reported by the committee the undersigned fully concur.

HENRY J. RAYMOND.

JOHN HOGAN.

TESTIMONY.

JUNE 26, 1866.

Proceedings of the select committee of the House of Representatives appointed on breach of privilege in the matter of Hon. Lovell H. Rousseau, of Kentucky, and Hon. Josiah B. Grinnell, of Iowa.

The committee convened on call of the chairman, in the room of the Committee on Foreign Affairs.

Present, all the members.

The chairman laid before the committee the following resolutions of the House of Representatives:

THIRTY-NINTH CONGRESS, FIRST SESSION.

CONGRESS OF THE UNITED STATES.—IN THE HOUSE OF REPRESENTATIVES.

JUNE 15, 1866.

Mr. Spalding submitted the following, which was agreed to:

Whereas it is alleged in the public press that Hon. Lovell H. Rousseau, a member of this house from the State of Kentucky, did, on the evening of Thursday, the 14th instant, commit an assault upon the person of Hon. J. B. Grinnell, a member of this house from the State of Iowa, because of words spoken in debate in this house by the latter; and whereas said assault, if committed, was a breach of the privileges of this house and of the member assaulted: Therefore,

Resolved, That a select committee of five be appointed by the Speaker to investigate the subject and to report the facts, with such resolutions in reference thereto as, in their judgment, may be proper and necessary for the vindication of the privileges of the House and the protection of its members, and that said committee have power to send for persons and papers, and to examine witnesses on oath.

The Speaker appointed as said committee—

Mr. RUFUS P. SPALDING, of Ohio.

Mr. NATHANIEL P. BANKS, of Massachusetts.

Mr. JOHN HOGAN, of Missouri.

Mr. HENRY J. RAYMOND, of New York.

Mr. JAMES K. MOORHEAD, of Pennsylvania.

Attest:

EW'D McPHERSON, *Clerk.*

THIRTY-NINTH CONGRESS, FIRST SESSION.

CONGRESS OF THE UNITED STATES.—IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1866.

The Speaker appointed Mr. M. Russell Thayer, of Pennsylvania, a member of the Select Committee on the Assault upon Hon. J. B. Grinnell, in place of Mr. James K. Moorhead, excused.

Attest, for the Clerk:

ISAAC STROHM, *Assistant Clerk.*

SATURDAY, *June 26*, 1866.

Hon. Daniel Morris sworn and examined.

By the CHAIRMAN :

Question. Your attention is called to an alleged assault committed by the Hon. Mr. Rousseau, of Kentucky, upon the person of the Hon. Mr. Grinnell, of Iowa. Please state your knowledge of that transaction.

Answer. Personally I know nothing of it.

Question. State what you know about it, whether personally or otherwise.

Answer. The day after it occurred I heard a conversation at the Ebbitt House, at which Mr. McAllister, General Dodge, and a Doctor McGrew or McGlew—I am not certain as to the name—was present. I should know the man if I should see him. He claimed to be from Kentucky.

By Mr. GRINNELL :

Question. What did he say ?

(Question objected to, and objection sustained by the committee.)

Hon. J. B. Grinnell sworn and examined.

By the CHAIRMAN :

Question. State the particulars of the alleged assault upon your person by the member from Kentucky, giving time, place, &c.

Answer. After the adjournment of the House, on the evening of the 14th, I passed out through the rotundo to the east portico of the Capitol with the intention of taking the cars. While on the portico Mr. Rousseau caught me by the shoulder, and as I was moving east he said, "I want an apology," or "I have been waiting for an apology." I replied, "You began the assault upon me in the House, and you should make the apology; I have none to make." He swore considerably and said what I will not repeat here: placed his right hand on his breast, raising it, as I supposed, to draw a weapon. I seized him by the coat collar with my right hand. He changed the cane then, which was in his left hand, to his right, and commenced striking me over the head, face, and shoulders with the cane. He struck me until it was broken. The cane was a common ratan cane, with an iron end. I said then, "You assailed me, but I have no desire to hurt you." He said, "I wish to degrade you." He might have said "I do not wish to hurt you." I saw it reported that he said that, and I do not undertake to deny it. I know he said, "I wish to degrade you." I replied, "You cannot degrade me." I only defended myself. He continued swearing, called me a damned coward, and used such language. I made no resistance. There was no person there I ever saw to know, except Senator Saulsbury. There were other gentlemen standing there, apparently Mr. Rousseau's friends, at least I think they were in sympathy with him. I said then, "If the crowd have done with me I will leave." I picked up the end of the cane and walked away. Some one or two gentlemen took Mr. Rousseau's arm and walked away simultaneously. I did not resist him, knowing I had no friends there nor any one I knew, and presumed that the purpose was to find occasion to assassinate me. I took down what occurred as near as possible on going to my room that evening, and have stated my recollection of it. The whole matter was very brief, and very little was said.

Question. How many times were you struck ?

Answer. I should think five or six blows, until the cane broke; one of them on my shoulder, which has rendered my arm almost useless ever since, making a heavy mark with the iron end of the cane; one on my face, and one on my hand, making it useless for the time being. These are the only three blows that gave me any injury—on my face, left shoulder, and hand.

Question. How long was this after the adjournment of the House?

Answer. Immediately after the adjournment. I started out in company with Mr. Ames and Mr. Price. I left the cloak-room with them, but separated from them directly. They asked me if I had an umbrella. I told them I had not, and intended to take the car; that I could not wait until the rain stopped; it was raining very fast.

Question. Do I understand you that you walked directly from the hall of the House of Representatives to the east main portico of the Capitol?

Answer. Yes, sir; I went out through the rotundo.

Question. How many men were present under that portico at the time the assault occurred, to the best of your recollection and judgment, within ten or twelve feet of you?

Answer. I should think there might have been eight or ten. There might have been more. I anticipated violence when I saw the condition of Mr. Rousseau. I was not armed, and there was no one I knew present but Senator Saulsbury.

Question. When you went out from the rotundo you found Mr. Rousseau and his friend there?

Answer. No, sir; he came up behind me. I do not recollect seeing any person in the rotundo or in the portico when I went out.

Question. State how many minutes this was after the adjournment of the House.

Answer. I should say three minutes; as much time as would be required for me to go into the cloak-room, and from there to the rotundo.

Question. Did General Rousseau tell you at the time what it was for; why he assaulted you with his walking-stick; whether it was for words spoken in debate in the House, or what?

Answer. He mentioned "Monday." I remember that word, but have no recollection of any words in connexion with it except "apology." "Apology" and "Monday" were mentioned.

Question. On what day was the last discussion, previously, between you and Mr. Rousseau in the House?

Answer. On the Monday previous. This was on Thursday afternoon, between four and five o'clock.

By Mr. HOGAN:

Question. Were there any persons on the portico when you got there?

Answer. I did not see them if there were, though there might have been a few waiting for the cars, or something of that kind. I did not observe. I was walking fast for the purpose of catching a car.

Question. Do you recollect whether Senator Saulsbury was there when you got there, or whether he came there afterwards?

Answer. I did not see him until the midst of the assault. Then I looked over and saw him on my left, I should say ten or twelve feet distant. I looked afterwards, and, as near as I can recollect the position, I think he was standing against one of the pillars, and I was near another.

Question. You did not know any of the persons at all?

Answer. I recognized some gentlemen I had seen. I do not know them by name.

Question. Were none of the members of the House there?

Answer. No, sir.

Question. Was any one standing with Mr. Saulsbury?

Answer. I think he was standing quite alone. He seemed to be alone, or standing beside a column. I should think there was no person within two or three feet of him according to my recollection.

Question. Were there any members of the House who went out at that time to take the cars ?

Answer. There were none. I am sure of that, for I looked around before I left the steps.

Question. In going from the House to take the avenue cars do you generally go through the rotundo ?

Answer. I am in the habit of going out there because the cars stop right in front of the portico. It is common, however, for me to walk home.

Question. You said your apprehension was that you would be assassinated ; what ground had you for assuming that ?

Answer. I assumed it from the apparent sympathy of the persons who were present, and from common rumor that Mr. Rousseau went armed. I thought I saw the mark of a weapon in his coat.

Question. Did he make an effort to draw a weapon ?

Answer. He was about to put his hand to his breast when I caught him by the collar.

Question. Would not that have been to separate you from his person ?

Answer. No, he put up his hand before I touched him.

Question. You did not see his hand on his weapon ?

Answer. No. I thought I saw the mark of his weapon in his coat. I concluded it must be a pistol.

Question. There was no effort made by anybody to draw a weapon ?

Answer. I saw none.

Question. You saw no instrument of destruction except this cane and probably the mark of a pistol in his inside coat-pocket ?

Answer. That was all. His coat was buttoned up, and I thought I saw the mark of a pistol in his coat.

By Mr. BOUTWELL, (present by permission of the committee temporarily, at the request of Mr. Grinnell, until Mr. Wilson should be present :)

Question. State whether or not, after Monday, and before the assault, any person came to you and engaged you in a conversation which you afterwards connected with the assault.

Mr. Rousseau objected to the question, on the ground that he could not be made responsible for what other persons may have said, unless the conversation was in his presence.

Objection overruled. The answer, if of importance, only to be corroborated by the person himself making the statement.

WITNESS : I will state that on Thursday, while I was in my seat, a man came to me ; I had on a linen coat. He took hold of my coat, threw it open and scanned my person, and said, " I want to talk to you." I said, " I am occupied now ; I do not know you." He said, " I am from Kentucky." " What more," I said ; " I am occupied now." He then said, " Never mind," and passed off. He was a man I never saw before nor since.

Question. Was the House in session ?

Answer. No, sir. It was ten or fifteen minutes before the House was called to order. After the occurrence of Thursday, I thought he came to find out whether I was armed. I judged so by his throwing my coat back in that way. Afterwards when I proposed to talk with him he said, " No matter."

Question. Would you be able to identify that person if you should see him again ?

Answer. I think I would.

By Mr. BANKS :

Question. You do not know his name ?

Answer. No, sir.

Question. Where was he?

Answer. Right at my seat just before the House was called to order. He mentioned Mr. Rousseau. I am not able to state that he mentioned more than his name.

Question. Describe that man as well as you can.

Answer. He was a thick-set man, I should say over fifty years of age.

Question. Had he light or dark complexion?

Answer. He had so much hair on his face I could not tell his complexion.

Question. Heavy moustache?

Answer. Yes.

Question. Heavy beard?

Answer. Yes, sir.

Question. Is it very usual for a stranger to come up to a gentleman in that way, and take hold of his coat and speak to him the way he did to you?

Answer. I could not say that it was.

Question. You had no introduction to him?

Answer. No, sir.

Question. And he did not mention his name?

Answer. He did not mention his own name; he mentioned Mr. Rousseau's name.

Question. In what connexion?

Answer. I am not able to say. I asked him who he was. He said, "I am a Kentuckian." He said, "Do you know Rousseau?" or something of that kind. I am unable to say what he said it in connexion with, but he mentioned his name.

Question. Was there anybody with him?

Answer. Not that I remember. There was a clump of members, or at least one or two, sitting near.

Question. Was this man present at the time of the assault?

Answer. I have never seen him since.

By Mr. ROUSSEAU:

Question. Did you ever see a man here called "Live-forever Jones," from Kentucky—an insane man?

Answer. No, sir.

Question. Had this man who accosted you in the House a long beard and a great deal of hair about his face?

Answer. I should not say very long. I think he had a good deal of beard about his face.

Question. And you say about fifty-five years of age?

Answer. I should say over fifty years of age.

Question. Do you know how he was dressed?

Answer. He was pretty roughly dressed.

Question. Did he speak quick or slow?

Answer. I could not say as to that. He spoke only a single word to me.

Question. What did he say about me?

Answer. I can only say that he mentioned your name.

Question. Was there anything to prevent your hearing it if he had said anything else about me?

Answer. No, sir; only I was occupied in conversation with another party?

Question. Did you hear him use the words you have mentioned?

Answer. Yes, sir. I just looked up and saw him.

Question. After he said he was from Kentucky, you said "what more?" Then he said he wanted to talk to you, as I understand.

Answer. Yes; but he said nothing more after that.

Question. Were you looking at the man then?

Answer. His back was partly turned towards me.

Question. You started out of the House to get to the outside door, and as soon as you got to the eastern portico I tapped you on the shoulder, and at that time spoke to you?

Answer. I should say you caught me by the shoulder.

Question. You turned around?

Answer. I turned partly around.

Question. Did you say I had a ratan in my left or right hand?

Answer. I think you had it in your left hand at that time.

Question. Have you any doubt about that?

Answer. The first time I saw it I think it was in your left hand. I am not able to say very positive.

Question. When I told you I had been waiting four days for an apology, did not you say "What of that?"

Answer. No, sir; not to my recollection.

Question. Did not I then instantly strike you with a cane and tell you I would teach you "what of it." Just as soon as the word came out of your mouth, whatever it was, declining an apology, did not I strike you instantly with the stick?

Answer. I said I had no apology to make, and the blows came very soon.

Question. Did not the cane come instantly?

Answer. I should say very soon.

Question. Was I not dressed precisely as I am now?

Answer. I did not observe your dress particularly; I only observed your coat partly buttoned up.

Question. Was I not dressed as I am now, with a handkerchief in the breast of my coat?

Answer. I could not tell; I think I saw the mark of a pistol.

Question. Did you see any other mark of a pistol than you see now?

Answer. I could not tell; you were trembling and very pale. I saw the mark of a pistol.

By the CHAIRMAN:

Question. Did you say he said he had been waiting four days for an apology?

Answer. I did not say that.

By Mr. ROUSSEAU:

Question. I ask you if I did not state that I had been waiting four days for an apology?

Answer. I did not hear you say that. You said "I want an apology."

Question. I want to ask you again to state whether I did not strike you over the shoulders with the ratan on the instant you uttered words declining an apology, whatever they were?

Answer. I said very soon. I would not say on the instant. I think you swore a good deal before you struck me.

Question. Did not I strike you before swearing any?

Answer. I think not.

Question. Are you positive about that?

Answer. I think I am.

Question. Was not the swearing and the striking done simultaneously?

Answer. I should say you swore first.

Question. Did you put your hand on me until that ratan was about worn out?

Answer. I think I caught you when you commenced.

Question. I beg you to be sure about that matter. I ask you to bring it again to your recollection. After the cane was broken did you take me by the arm

and say you did not want to hurt me; and did I not say you were very kind; was not that the first time you laid hands on me?

Answer. No, sir; I caught you by the coat-collar before you struck; as you put your hand to your breast to draw a pistol, as I supposed, I caught you by the collar.

Question. Do you say I put my hand to my breast to draw a pistol?

Answer. I thought so.

Question. Had I the cane in my right hand?

Answer. I thought you had it in your left hand, and as you were drawing your right hand up I seized you by the coat-collar.

Question. If you had thought that, would not you have been more likely to have caught me by the hand to prevent drawing a pistol?

Answer. I caught you by the coat believing I could prevent you in that way.

Question. Was the coat buttoned up as now?

Answer. I should think not so much. I should say the two lower buttons were buttoned.

Question. I wish to put the question to you distinctly, so as to introduce proof on that subject. I ask you again if, when I spoke to you about an apology, and you said something declining it, whether I did not instantly begin with the ratan and wear it out, and whether every blow I struck was not struck before you put your hands on me; and when you took hold of my arm did I not take you by the throat and thrust you up against a column; and did not you then remark to me, "I do not want to hurt you;" and did I not say, "You are very kind," or words to that effect?

Answer. No, sir; that is not a fact. I caught you by the collar before the ratan was broken.

Question. Before I struck you at all?

Answer. About simultaneously.

Question. The movement on your part taking me by the arm and the blow were about simultaneous?

Answer. I said I did it before any blows were struck.

Question. Did not you say simultaneously?

Answer. If I did I do not say so now. I have already stated that I took you by the collar before any blow was struck.

Question. I ask you again if you did not say you caught me by the collar simultaneously with my striking you?

Answer. I have already said before, and, if necessary, I will repeat myself, that I caught you by the collar when I thought you were raising your hand to draw a pistol.

Question. I ask you if you did not say that the blow and catching me by the collar were simultaneous?

By Mr. BANKS: If you used the expression inadvertently it is proper to state it.

WITNESS. I say I cannot recollect. If I made use of that expression it was through inadvertence. I am not to be catechised in that way.

Question. I repeat, did you not say a moment since it was simultaneously with the blow?

Answer. I will leave the record to show that. I am not able to recollect. If I used the expression I did it inadvertently.

By Mr. BANKS:

Question. Do you know that you made that statement?

Answer. No, sir; I do not know it.

By Mr. ROUSSEAU :

Question. When you got out on the portico were there not more than ten or fifteen people standing there waiting for the cars ?

Answer. I did not see them.

Question. At what time during the affair did you notice Mr. Saulsbury ?

Answer. After you broke that cane.

Question. Was not he standing some fifteen or twenty steps or more away, only merely looking to see what was going on ?

Answer. He was standing ten or fifteen feet, by one of the columns. I do not think any person was standing within two or three feet from him.

Question. Did anybody know which way you were going when you started out of the House, so far as you are aware ?

Answer. Not that I am aware of. I went out to take the cars.

Question. You had told nobody that you were going that route ?

Answer. No, sir.

Question. It was immaterial, was it not, which way you did go ?

Answer. No ; I wanted to go the shortest way.

Question. Had anybody an idea which way you were going, so far as you know ?

Answer. As far as I know, they had not.

Question. Did you make a statement of these matters after you got in the cars that evening ?

Answer. I think I did mention some of the details or some of the particulars.

Question. Who was present ?

Answer. Several members were present. My colleague, Mr. Price, for one.

Question. I want to ask you distinctly whether you said one word about my having assaulted you first ?

Answer. I did.

Question. Were there more than a dozen words between us before I struck you with a ratan ?

Answer. Very few words.

Question. Was it not simply that I wanted you to apologize ; that you declined, and I struck you instantly ; was not that the whole of it ?

Answer. I have replied to that two or three times.

Question. I ask you again whether it was not just that way ?

Answer. I repeat again that I said distinctly the apology should come from you ; that you owed me an apology.

Question. You said that before I struck you ?

Answer. Yes, sir.

Question. Are you perfectly certain you ever said that at that time ?

Answer. I am. I said, "The apology is due from you ; you began the assault. I have none to make."

Question. When you had me by the arm, and I had one hand on your neck, and the other on your arm, did not I say let go, and did not you do it instantly ?

Answer. I have no recollection of your saying that.

Question. Did not you take a piece of that stick and say you would take it to your wife ?

Answer. I do not know whether I said it then. I said it in the cars.

Question. Have you a piece of the stick ?

Answer. I have it in my possession, and I intend to take it home. It has an iron end to it. I have the marks upon me.

Question. Was that gentleman sitting on the sofa (pointing to Mr. Grigsby) present ?

Answer. I have no recollection.

Question. Did you see either him or Colonel Pennybaker present ?

Answer. I have no recollection.

Question. Did not Colonel Pennybaker touch me at the elbow, and did I not walk away?

Answer. You walked away with some man, I think, with light whiskers.

Question. Did not I turn and walk away before you left?

Answer. I think we walked away simultaneously.

Question. Did you pick up the stick after I left or before?

Answer. I picked it up as you were done striking, just as I was about to leave, and as you were about to leave.

By the CHAIRMAN :

Question. Will you state whether at any time within the last six weeks, outside of the sittings of the House, you have had any communication with General Rousseau, the member from Kentucky, of any character whatever?

Answer. No, sir.

Question. Neither by word nor by letter?

Answer. No, sir.

By Mr. BANKS :

Question. In the conversation you had with this stranger in the House, was any one else present who heard what he said?

Answer. I think there are several persons who will remember the circumstance.

By the CHAIRMAN :

Question. State whether you were bleeding at the time you went home.

Answer. There was blood on my face from the blow, and on my shoulder also blood was drawn.

By Mr. HOGAN :

Question. I understand you to state that when first spoken to by General Rousseau you turned around to him, and then thinking you saw the evidences of a pistol in his breast, you seized him by the collar?

Answer. No, sir ; I did not seize him until he raised his hand.

Question. You saw him attempt to raise his right hand, and at that time the cane was in his left?

Answer. I think it was in his left.

Question. He had no cane in his right hand when he raised it?

Answer. I think he had none. I think it was in his left hand.

Question. At what time did he change the cane from his left to his right hand?

Answer. Instantaneously as I caught him by the collar. As he dropped his hand I released my hold from his collar. He shifted the cane from his left to his right hand and commenced striking instantly. I then caught him again as he commenced to strike.

Question. Did you notice the change of the cane from one hand to the other?

Answer. I think I did.

By the CHAIRMAN :

Question. Have you anything further to say?

Answer. Nothing in regard to the occurrence, only that I have had no unkindness towards Mr. Rousseau at all. When he had replied to me I supposed the matter was dropped. He said, "I hope to hear nothing further from that."

Mr. Rousseau objected to the statement of the witness as not testimony. The objection was sustained.

William P. Turpin sworn and examined.

By the CHAIRMAN :

Question. Your attention is called to an alleged assault committed by the honorable Mr. Rousseau, of Kentucky, upon the person of the honorable Mr. Grinnell, of Iowa. Please state your knowledge of the transaction.

Answer. I am clerk in the city post office for the Capitol, and occupy the old Speaker's room immediately upon the south end of the east portico. While there at my work on the evening of the 14th, looking up I saw two gentlemen walking up and down in front of my window. One of them was Senator Saulsbury. While they were there I heard something which they seemed to hear, and I noticed them walking rapidly toward the other end of the portico. I jumped on my table, went through the window, and saw Mr. Grinnell there standing near a pillar and saw some fragments of a ratan cane lying at the foot of the pillar. I did not see any blows struck. It was all over in an instant, I presume. I picked up a portion of the cane and staid there some time until General Rousseau had retired. He retired soon after I came on to the portico. He had a friend with him who seemed to be urging him to retire.

Question. Was that gentleman (pointing to Mr. Pennybaker) with him?

Answer. I don't recognize him. I did not pay much attention to him. I had to hurry back to my work. It was nearly time to despatch my mail. I went out and inquired what was going on.

By Mr. BANKS :

Question. Were Mr. Rousseau and Mr. Grinnell both there?

Answer. Yes, sir; I saw them both. I was not acquainted with either of them. I knew Mr. Rousseau by sight. I did not know Mr. Grinnell even by sight. I was standing near Mr. Grinnell, not knowing he was the assaulted party.

Question. How many persons should you think were there?

Answer. I should think ten or fifteen.

Question. Was any member of the House there that you knew besides Mr. Grinnell and Mr. Rousseau?

Answer. I did not recognize any.

Question. Would you have noticed any member there if he had been there?

Answer. I think I should. I know most of the members of the House.

Question. Did these ten or fifteen persons seem to be together?

Answer. They were standing in groups, as any excitement will draw men together. They were trying to inquire what was the matter; everybody was inquiring. I did not see anybody who seemed to know much about it.

Question. And there were not any of them standing together as though they were one party?

Answer. Not at all, sir.

Question. How long before you heard the noise did you notice Senator Saulsbury with the other person you mentioned passing up and down in front of your room?

Answer. I think he had been walking there ten minutes, perhaps. The gentleman who was with him was a tall, fine-looking man. I did not know either of them myself. My assistant told me one of them was Senator Saulsbury. I think it was as much as ten minutes; I cannot say positively.

By Mr. HOGAN :

Question. Do you know Senator Saulsbury's brother, the governor of Delaware?

Answer. I do not. This was a large, tall, fine-looking man, and that led me to notice him more than anything else.

By the CHAIRMAN :

Question. Did you say it had been raining sharply some time ?

Answer. It had been raining, and was raining then I think.

By Mr. GRINNELL :

Question. I would like you to say whether there was any one there beside Mr. Rousseau who seemed to be his friends ?

Answer. There was a gentleman who seemed to urge him to quit the contest. I think he had him by the arm or hand and urged him away. General Rousseau seemed to be very much excited.

Question. Was he pale ?

Answer. I do not know that. I noticed him as being excited. His friend seemed to be acting in the capacity of pacifier or peace-maker.

Question. How many seemed to be acting that way ?

Answer. I only noticed that one.

Question. And this gentleman (pointing to Mr. Pennybaker) was not that one ?

Answer. I do not recognize him ; he may be the one. I did not pay any particular attention to the party.

By Mr. WILSON, (present as the friend and colleague of Mr. Grinnell :) :

Question. Did you notice there a large, heavy man, with brown pants and light coat on ?

Answer. No, sir ; I did not. As I said before, I was out there but a very few minutes. My business called me back again.

By Mr. HOGAN :

Question. You said Senator Saulsbury had been pacing backward and forwards.

Answer. Yes ; I noticed him before I did anybody else on the portico, except the gentleman with whom he came there. They were walking up and down together. They preceded me about two seconds, I suppose, to the place where the fight occurred. I could not see it from the window, and passed out of the window over the table in front of it.

Charles C. Pennybaker sworn and examined :

By the CHAIRMAN :

Question. Your attention is called to an alleged assault committed by the Hon. Mr. Rousseau, of Kentucky, upon the Hon. Mr. Grinnell, of Iowa. Please state your knowledge of the transaction.

Answer. I think it was on the evening of the 14th. I had got up to the House, and started out with Mr. Rousseau in the direction of the grand rotundo. Passing out to the east portico, Mr. Rousseau passed out before me, and the door working by a spring closed just as I came to it. I immediately pushed it open ; saw Mr. Rousseau reach out his hand at some one, call in a not very loud tone of voice, "Mr. Grinnell." Mr. Grinnell then turned around. The first words General Rousseau spoke I did not catch. He then seemed to repeat in a little louder tone of voice (but his tone of voice was not loud) something about an apology he had waited for four days, and had not received it. Mr. Grinnell remarked "Well, what of it?" Mr. Rousseau then instantaneously commenced striking him right and left with a cane over the shoulders. After a few strokes he ceased and said he would teach him about it ; he then gave him two or three smart strokes, and his cane broke. Then Mr. Grinnell caught him by the left arm. Mr. Rousseau caught him by the breast and backed him up against one of the pillars ; when in that position (I was near Mr. Rousseau, at his

right elbow) I put my hand on him and said "General, don't strike him; this has gone far enough; don't strike him." He gave Mr. Grinnell a little push and the parties separated. General Rousseau then used pretty strong language. Mr. Grinnell remarked "It is all right." In the mean time, when Mr. Grinnell caught General Rousseau by the arm, he remarked "I don't want to hurt you." The general told him he was very kind; that he did not expect to be hurt, or something to that effect. That part of it I did not catch very well. Just then I took hold of the general and they separated. Mr. Grinnell passed down the steps, and Mr. Rousseau and myself went back to the House.

Question. You said he used strong language. Please state what that language was.

Answer. He said "damned coward," and "damned poltroon."

Question. What did he say about not wanting to hurt him, but wanting to degrade him?

Answer. When Mr. Grinnell said "You have not hurt me," Mr. Rousseau told him, "I do not want to hurt you—I do not mean to hurt you; I want to degrade you."

Question. Did you leave the hall with General Rousseau?

Answer. Yes, sir; I left it with him.

Question. How soon after the adjournment of the House?

Answer. It was very soon—almost immediately afterwards. There was a stream of people passing out to the other end of the Capitol.

Question. And you walked together, as I understand?

Answer. No; he got a little the start of me. I was afraid I might lose him and ran rapidly to overtake him. In passing through the old hall of the House of Representatives I came up to him, passed into the rotundo, then out of the east door.

Question. Had you seen anything of Mr. Grinnell before you passed out of the east door of the rotundo?

Answer. No, sir; or if I did, I do not now remember.

Question. Where had you seen him before?

Answer. I had seen him in the House.

Question. Did you know he had gone in that direction?

Answer. No, sir; I did not.

Question. What conversation had you had with Mr. Rousseau in respect to Mr. Grinnell that afternoon?

Answer. Not one word.

Question. Does General Rousseau ordinarily carry a walking-cane like the one he used on that occasion, or did he carry that for that special occasion?

Answer. I do not know; I think he usually carries a cane.

Question. How does the size of the one he has in his hand compare with the one he used then?

Answer. That was a smaller cane—a little ratan stick with an iron tip to it.

Question. You say you heard him address Mr. Grinnell by name, and heard him say he had been waiting four days for an apology and had not received any; did you hear that distinctly?

Answer. Yes, sir; I did.

Question. What was the reply?

Answer. Mr. Grinnell replied, "What of it?" Then the assault commenced.

Question. What did General Rousseau say?

Answer. He did not say a word; he struck him immediately.

Question. How many blows?

Answer. Not very many. I could not say how many, they were so very rapid.

Question. Where were the blows applied?

Answer. Right and left, over the head and shoulders. The thing was so rapid

it would be impossible to give more than an impression; my impression was that he struck him four, five, or six blows, on each side.

Question. During this time you stood aside, did you?

Answer. Yes; I was four or five feet off.

Question. Had you any reason to know where that assault was to take place on that evening, by General Rousseau, on the person of Mr. Grinnell?

Answer. No, sir; I had no reason to suppose that it would take place there. I had reason to believe it would take place at some time, perhaps.

Question. What did you know about it?

Answer. General Rousseau sent for me on the morning of that day, and told me what would probably occur.

Question. What did he tell you?

Answer. He told me Mr. Grinnell had used harsh language toward him.

Question. Used harsh language toward him where?

Answer. I suppose in the hall of the House; and he was going to use a ratan on him.

Question. What did he call it? Did he say he was going to chastise him, to flog him, or what?

Answer. I do not remember what particular expression he used. It is my recollection he said he was going to use a ratan.

Question. At what time was this?

Answer. About half-past eleven in the morning.

Question. Where was it the general told you this?

Answer. It was in the yard below here—between here and the Capitol gate, coming toward the Capitol, between eleven and twelve o'clock.

Question. Did he tell you on the way when or where he designed to do it?

Answer. No, sir. I rather inferred from his talk that he contemplated it that evening.

Question. In consequence of that information did you stay by during that afternoon?

Answer. I returned and went up to the House in consequence of that information, that evening.

Question. Did you go at the request of General Rousseau?

Answer. No; the general did not make any request at all. He asked me to come up in the evening, and I arrived there not more than ten minutes before the House adjourned.

Question. You live in Kentucky?

Answer. Yes, sir.

Question. What arms had you on your person at that time?

Answer. I had a three-inch Colt's revolver.

Question. How was it loaded?

Answer. Upon my word I do not know. It has been in my drawer for a long time. I suppose it was ordinarily loaded with powder and ball.

By Mr. BANKS:

Question. Had you carried it before that day?

Answer. Yes, sir; it was one I kept in my drawer, and sometimes I put it in my pocket when I went out.

Question. Had you had it in your pocket within a week before?

Answer. Yes, sir.

Question. Had you carried it the day before on your person?

Answer. No; I think not.

Question. Then you took it out on account of the information you had received?

Answer. Yes, sir; I thought it would be as well to have it. I wish to say, however, in that connexion, that I had no intention of using it at all.

By the CHAIRMAN:

Question. But it was a pistol you had confidence in that it would not miss fire if you had occasion to use it against a ruffian, or anything of that kind?

Answer. Yes, sir.

By Mr. BANKS:

Question. Was there any other person with you at that time, as a friend of General Rousseau?

Answer. None, to my knowledge.

Question. How many other persons were present?

Answer. I think ten or twelve on the portico.

Question. Did you know any of them?

Answer. Colonel Grigsby I knew. He is now present, however, and will speak for himself. He came up to the House soon after I did, with me, to see some member of Congress, and when I started out of the hall I called him to follow me and get in the car; we were going to General Rousseau's room. I saw Senator Saulsbury, and others who were strangers to me. I did not see Senator Saulsbury until the thing was over; I then saw him standing there near a post.

Question. Did you see any one speaking to General Rousseau with a view to induce him to desist?

Answer. No, sir; except what I did myself, and what Colonel Grigsby did. He came up in front of him, and Mr. Rousseau walked off with us.

Question. It was you, then, who was referred to as having touched Mr. Rousseau's elbow?

Answer. Yes, sir.

By Mr. WILSON:

Question. How long before the adjournment of the House did you enter the hall?

Answer. I was standing there just as the House adjourned; had been there but a few minutes.

Question. Was Mr. Grinnell in the House?

Answer. Yes, sir.

Question. And you say you started away from the hall with General Rousseau. Was it your intention, on leaving the hall with him, to continue in his company?

Answer. Yes, sir. My intention was to go with him to his lodgings.

Question. In the passage going through the old hall you got separated. Where did you join him?

Answer. I overtook him in the old House hall, and walked with him into the rotundo.

Question. Did you see Mr. Grinnell in the rotundo?

Answer. I don't remember seeing him. The first I saw of him was outside of the door on the portico.

Question. Were you walking by the side of Mr. Rousseau?

Answer. I was behind him; General Rousseau was walking very rapidly. The door shut as he went out just ahead of me.

Question. Now, state what was the first thing you saw after you opened the door.

Answer. Just as I emerged from the door I saw Mr. Rousseau reach out his hand and say, "Mr. Grinnell."

Question. How far was Mr. Grinnell from the door at that time?

Answer. He was near the steps at that time.

Question. Do you say General Rousseau had made no motion with his hand toward Mr. Grinnell, and had not spoken to him before you got outside the door?

Answer. That I do not know. What I have stated was the first I saw.

Question. Then he may have said something before you got out of the door?

Answer. That is the first I heard.

Question. How long after you got out was it before General Rousseau struck Mr. Grinnell?

Answer. I suppose an instant. The time was incredibly short.

Question. During that time this conversation you have detailed occurred?

Answer. Yes sir.

Question. How long did he continue striking him?

Answer. The time from first to last did not amount to more than a minute, I suppose.

Question. What position did the parties occupy toward you at the time this occurred?

Answer. I was a little to the right and slightly to the rear of Mr. Rousseau.

Question. Where was Mr. Grinnell?

Answer. He was right in my front.

Question. Could you see everything that passed between them from the time you opened the door until the affair was over?

Answer. I think I could.

Question. Could not something have transpired between them as you were changing position without its being noticed by you?

Answer. Something possibly might have transpired; I do not think so.

Question. Did Mr. Grinnell place his hand on Mr. Rousseau at the time of the first striking?

Answer. No, sir.

Question. Do you say distinctly there was nothing of the kind?

Answer. I saw nothing of the kind. My recollection is there was nothing of the kind, and I think if there had been I should have seen it.

Question. Were you in a position to see before you took your stand to the right of Mr. Rousseau?

Answer. I could not see Mr. Rousseau's face then.

Question. Then something might have transpired that you did not see?

Answer. Yes; but the moment Mr. Grinnell turned I then saw what occurred, and up to the time the striking had commenced neither of the parties had made any motion with his hand.

Question. Could anything of that kind have occurred before you got out of the door?

Answer. If there had I did not see it.

Question. After General Rousseau struck several blows you said he desisted?

Answer. For a moment; yes.

Question. What occurred in that moment?

Answer. He said, "I will teach you." I suppose in reply to Mr. Grinnell's remark, "What of it?" Mr. Rousseau said, "I will teach you." He used some pretty strong language then. Mr. Grinnell then caught General Rousseau by the left arm, and General Rousseau commenced to strike again.

Question. Was that the time he called Grinnell a damned coward and poltroon?

Answer. Yes; I think it was.

Question. And then continued to strike?

Answer. Yes. He struck him two or three more blows. Mr. Rousseau caught hold of Mr. Grinnell, and they had hold of each other's arms. Mr. Rousseau's left arm was against Mr. Grinnell's breast, and his right arm on Grinnell's left arm.

Question. Did Mr. Grinnell have hold of Mr. Rousseau's person?

Answer. Yes.

Question. You did not interfere?

Answer. Not until the time I have stated, after General Rousseau had broken

his cane and had hold of Mr. Grinnell. I touched him on his elbow and said, "Don't strike."

Question. Can you state that before you got out the door Mr. Grinnell did not put his hand in the position he has stated?

Answer. Yes, sir.

Question. How can you state that?

Answer. Because, as I said, when I got out of the door Mr. Rousseau put his hand on Mr. Grinnell's shoulder, and Mr. Grinnell turned around. They then had some conversation, but neither of their hands had moved at all. Mr. Rousseau had his cane in his right hand, hooked on his thumb.

Question. Can you state that before you came to a position in which you could see what was transpiring between these parties General Rousseau did not have his hand to his breast, as has been stated?

Answer. No, sir. He may have put his hand up before I passed the door. I don't think the parties had touched each other.

Question. How do you know, if the door had closed?

Answer. Because I was in sight when the parties came together.

Question. Do you know whether he could have reached him when he first got out of the door?

Answer. Mr. Grinnell had not stopped. I can only state what I saw; but I do not believe anything passed between them, or that a motion was made, until I came in sight.

Question. State where Mr. Rousseau lives.

Answer. 341 F street.

Question. Which street railroad would he take to go there, naturally?

Answer. The F street road, as I should say.

Question. And would not go out of that portico to take the cars of that road?

Answer. No, sir.

[Mr. Rousseau here admitted that he followed Mr. Grinnell from the hall to the portico purposely, though he did often go that way.]

Question. Do you know to what General Rousseau referred when he said he had waited for an apology?

Answer. Whether he stated it in so many words in conversation I do not remember; but I am satisfied that he alluded to remarks made by Mr. Grinnell on the floor of the House on the Monday previous.

[Mr. Rousseau admitted that in the expression referred to he alluded to remarks made by Mr. Grinnell on the floor of the House the Monday previous.]

By Mr. BANKS :

Question. What occasion did you suppose you would have for the use of the pistol in any possible event?

Answer. In a street fight, outside parties jumping in or attempting to interfere, it seemed to me there would be a possibility of its being necessary to use a weapon.

Question. Your intention, then, was to take part in the affray in that event?

Answer. In the event of any person undertaking to commit an assault upon either of the contending parties, and especially upon General Rousseau, I intended to interfere. Between the parties themselves I would not have interfered. I expected to let them take care of themselves, unless outside persons had interfered.

Question. In other words, you intended to see a "fair fight?"

Answer. Yes, sir.

By Mr. ROUSSEAU :

Question. That was your sole purpose?

Answer. It was.

Question. Was it so understood that you were not to interfere between Mr. Grinnell and myself?

Answer. Yes, sir.

Question. Did I have any knowledge of your having arms?

Answer. No, sir; nobody had.

Question. State to the committee whether I had arms, or whether I carry them at any time.

Answer. It seems to me your dress is now about the same, so far as any appearance of your carrying arms is concerned, as then. I never saw you have any arms, and never saw any about your quarters.

Question. Are you satisfied that upon that occasion I had no arms?

Answer. I do not believe you had.

Question. In our conversation about this contemplated affair did not I tell you that I had no arms and should not have any arms?

Answer. After this thing was over, I believe it was the next day, I met Mr. Rousseau, and we had a conversation about it.

Objected to as not testimony, and objection sustained.

Question. I ask you whether in any conversation previous to that you heard me say I would not carry arms?

Answer. You said that morning that that ratan stick was all you had.

Question. Were you not immediately behind me in going out of the door? Was there an instant that I was out of your sight?

Answer. The door closed just as I came to it. I opened it at once. I am sure there was nothing I did not see.

Question. And the first thing you saw was my reaching out my arm when I touched Mr. Grinnell?

Answer. Yes, sir.

Question. And after that you saw everything that occurred?

Answer. I think I did.

Question. Were you looking at us?

Answer. Yes, sir.

Question. Did Mr. Grinnell put his hand to my coat, and did you see me put my hand up as if to draw a weapon?

Answer. No, sir.

Question. Could that have occurred without your knowing it?

Answer. I do not think it could.

Question. You were there to see what went on, were you not?

Answer. Yes, sir. And I am sure the first time Mr. Grinnell put his hand upon you was after the cane had been broken?

Question. Did you hear Mr. Grinnell say anything about an apology being due from me?

Answer. Not a word.

Question. Was there a single syllable uttered that you have not repeated?

Answer. That was all I heard.

Question. Were you where you could hear everything that was said?

Answer. I was four or five feet off.

Question. You are from Kentucky are you not, but live here for the present?

Answer. I am temporarily residing here. I left the army, and came here in 1864 as State agent.

L. B. Grigsby sworn and examined.

By the CHAIRMAN:

Question. Your attention is called to an alleged assault committed by the Hon. Mr. Rousseau, of Kentucky, upon the person of the Hon. Mr. Grinnell, of Iowa. Please state your knowledge of the transaction.

Answer. I was in the House of Representatives on the evening this affair occurred, and had come up to the House with Mr. Pennybaker; or, rather, when I left my room he asked me to call by his office, just this side of the Metropolitan Hotel, and go up with him, I having mentioned that I should like to go up and look about the Capitol. I arrived there about ten minutes before the House adjourned, and was talking to Mr. Harding, a representative of our State, when Mr. Rousseau came up, shook hands with me, and invited me to call and see him. He passed out the door just as the crowd started out. Colonel Pennybaker followed him, and I followed after Colonel Pennybaker and tried to keep up with him. There was a heavy shower of rain going on—quite a storm. They passed through several halls, I following Colonel Pennybaker and he following General Rousseau. We came out on one of the porticoes—I could not say which one, as I am not very well acquainted with the Capitol—and just as I stepped outside the door, immediately behind Colonel Pennybaker, I heard General Rousseau speaking to some one and heard the reply, but could not distinguish the words. I stepped a little to the right, and just as I did so General Rousseau raised a cane and struck a party over the head and shoulders, remarking, as he struck him, “I will teach you, sir,” or words of that import. He repeated the blow some five or six times. As he raised his hand I instantly stepped further to the right and partially in front of him. I at first did not know who he was striking. When he said “I will teach you” he laid on the licks across the shoulders of the party left and right. He remarked, “You took occasion to insult me in my seat in the House, damn you,” or some oath. I then thought who it was, as I had heard of the difficulty through the papers and otherwise. He had hit, I suppose, five or six licks, when he stopped for an instant. Mr. Grinnell then said, after he had stopped, “You did not hurt me, sir.” General Rousseau replied, “I did not want to hurt you; I wanted to disgrace you, you damned poltroon. I would have lost my right arm before I would have disgraced my State by resenting your insult in the House.” He then commenced to hit three or four more licks with the cane, when the cane broke and the piece he had in his hand fell down. Mr. Grinnell, I am pretty well satisfied, just before the time the cane broke, or after it broke, grabbed Mr. Rousseau by the arm and remarked, “I do not want to hurt you, sir.” General Rousseau remarked, in answer, I suppose, “You are very kind. You are a damned coward,” or something of that kind. Mr. Grinnell had Mr. Rousseau by the arm, and Mr. Rousseau had Mr. Grinnell by the collar. Some few words passed—pretty harsh language. General Rousseau gave him a push, shoving him right back against a pillar. About that time Colonel Pennybaker stepped up to General Rousseau, and I understood him to say “Don’t strike.” A few words passed between them. General Rousseau was excited and used some very strong language. I then went up, put my arm in his, telling him he had better walk away. I said, “If I were in your place I would take no further notice of the matter.” He turned about with me and walked back into the House. We walked down into the basement story and then came back in the same direction.

By Mr. BANKS:

Question. Did you interfere between the parties at all while the affair was going on?

Answer. I did not.

Question. Was there time for you to have interfered?

Answer. Yes. There was some one standing near Mr. Grinnell, a large heavy-set man. I do not know who he was. I did not know whether he was, in fact, with Mr. Grinnell, or whether he went out of the House with him or not. I had my eye principally on him. I had no disposition to interfere between the parties.

Question. Did this stranger attempt to interfere?

Answer. No. When Mr. Rousseau first commenced raising his cane, I thought I saw him knit his brows, and I thought, perhaps, it might be his intention to interfere. I stepped over between him and Rousseau, to be ready in case he should interfere.

By Mr. ROUSSEAU:

Question. I ask you if anything had ever occurred between you and myself which led you to believe that this thing was to take place?

Answer. Nothing whatever. I only arrived in the city a day or two before. I had not seen General Rousseau until I saw him at the Capitol, since 1862, when we were in the army together, and I only was with him three minutes before we went out at the door.

Question. Did I even know you were present on the portico until you came up to me?

Answer. I had no reason to suppose you did at all. I was following Colonel Pennybaker. I supposed you were running to get into a car. I never dreamed of anything of the sort occurring.

Question. You and Colonel Pennybaker walked away with me?

Answer. Yes, sir; I drew my arm in yours, walked back into the Capitol, down into the basement, and back again out of the same door, I believe, as I have stated.

Question. Did Mr. Grinnell put his hand on me until I had used the ratan?

Answer. He did not until the ratan broke. He raised his hand as if to ward off the blows you were striking.

Question. Were you where you could see what occurred?

Answer. I was, after the first lick. I believe after the first lick I stood immediately to your right.

Question. Did you see me raise my hand as if to draw a weapon?

Answer. I did not see any motion of that kind.

By Mr. BANKS:

Question. Do you ever carry arms upon your person?

Answer. Yes, sir.

Question. Were you armed on this occasion?

Answer. I had a small Deringer pistol in my pocket.

Question. How long had you had that?

Answer. I had carried it ever since I left the army. I do not suppose it has been out of my pocket in twelve months.

By Mr. ROUSSEAU:

Question. You did not have it with you for this particular occasion?

Answer. No, sir; for I did not know of any such occasion. The condition of society has been such in our town that it would not be safe to be unarmed. It is rather the exception than the rule for gentlemen not to carry arms, especially one who has been in the federal army.

Question. I understand you to say distinctly that you had no knowledge or intimation that anything of this sort was to occur?

Answer. Not the slightest. I was very much surprised when I saw you raise your hand, and I had no idea who you were striking. I had never seen Mr. Grinnell before until you struck him, and remarked, "I will teach you; you took occasion to insult me in the House."

By Mr. WILSON:

Question. Was it before or at the time the striking first commenced that General Rousseau used the words "I will teach you?"

Answer. He used the words almost simultaneously with the first lick. It was not done after the striking had ceased. The cessation was but for an instant.

By Mr. ROUSSEAU :

Question. Did not I several times during the striking say "I will teach you to insult me," or something of that sort?

Answer. I do not remember exactly that expression. You said "I'll teach you. You insulted me in my seat."

Question. Do you remember my saying that more than once?

Answer. You may have repeated it. I do not remember hearing you say it more than once.

By Mr. WILSON :

Question. Where is your residence?

Answer. Lexington, Kentucky.

Question. You spoke of some person who was present near Mr. Grinnell, and whom you kept your eye on. Who was he?

Answer. I had no idea who he was. He was beyond Mr. Rousseau, standing near Mr. Grinnell.

Question. Do you remember how he was dressed?

Answer. My impression is he had on a light coat. He walked off before the difficulty was over.

Question. If he had attempted to interfere, would you have interfered to prevent it?

Answer. I believe I said that if he had attempted to interfere I would have tried to prevent it; that was my object in stepping up between him and Mr. Rousseau.

Question. What do you mean by interference?

Answer. I mean that if he had attempted to strike Mr. Rousseau I should have prevented it. I merely intended that as far as Mr. Rousseau and Mr. Grinnell were concerned he should have nothing to do with it.

Question. In other words, you wanted a fair fight?

Answer. Yes; that was all.

Question. You stated that Colonel Pennybaker came up with you?

Answer. Yes. Colonel Pennybaker went over to my room to take a drink with me. He was talking about matters, and said he must go to the House. I told him I would go with him if he had no objections. He said, "Very well;" if I would come by his office, he would come up with me. I came by his office; but he had gone.

Question. What regiment did you belong to?

Answer. The twenty-first Kentucky.

By Mr. GRINNELL :

Question. You stated that you were in the rear of Mr. Rousseau. How could you tell whether I seized him by the collar or not?

Answer. I came up in the rear of General Rousseau; but I could see you distinctly. I could see Rousseau's hand with the cane in it, and every motion that was made.

Question. You say this man, who appeared to be my friend, went away in the midst of it?

Answer. He walked off where Senator Saulsbury was standing; I noticed him when he was half over there.

Question. And you came to the conclusion he was not my friend from his walking away in that manner?

Answer. Yes, sir; I came to that conclusion.

Question. Did you see a person with light hair and whiskers take Mr. Rousseau's arm, at the conclusion; or was it yourself?

Answer. I took his arm and walked off.

Question. You think there was no other person on the other side?

Answer. None, unless it was Colonel Pennybaker.

Question. I wish to know who that other gentleman and Kentuckian was who rode up in the cars with you that night, and who showed his pistol, and said he was there as Mr. Rousseau's friend, if there was any such person?

Answer. There was no Kentuckian in there that I know of. There were two or three persons in the cars, but no Kentuckian, except General Rousseau, Colonel Pennybaker, and myself.

By Mr. BANKS :

Question. You did not know the names of either of the persons who were on the portico?

Answer. There were two or three persons there whom I knew—Senator Saulsbury, Dr. McGrew, of Cincinnati, Colonel Pennybaker, and myself.

Question. Was Dr. McGrew there at the time?

Answer. He was there before it was over.

Question. Describe his person.

Answer. He is a man about the size of General Banks; hardly as heavy as the general. I do not remember how he was dressed.

Question. Did you or did you not hear him say anything about having his pistol?

Answer. I did not.

Hon. Lovell H. Rousseau, being duly sworn, made the following statement :

The matter is about as stated by Colonel Pennybaker and Colonel Grigsby. I followed Mr. Grinnell out of the hall of the House after the adjournment on Thursday. He walked very rapidly, and I had a little difficulty in keeping up with him. As has been stated, I did not want any difficulty with him in the House. When he had got to the eastern portico of the Capitol, some feet outside the door, I touched him on the shoulder just enough to attract his attention. Said I, "I have been waiting four days for an apology from you for the outrages you committed on me on Monday." I will not be sure of the exact words Mr. Grinnell used; I think he said, "What's that?" I repeated over rapidly what I had said, and my recollection is that Mr. Grinnell said, "Well, what of that?" I know his manner was offensive. I then raised my right hand and struck him instantly, telling him I would teach him, and using some harsh language I need not repeat here. The whole thing, conversation and all, did not occupy a minute, I think. I was excited and exceedingly angry, and could not measure time. I am sure Mr. Grinnell did not touch me until I used my ratan on him, and until about the time it was broken. I had no weapons; I never carry any. I was dressed exactly as I am now, with my coat buttoned as it is now. I am sure I did not raise my hand to my breast at all. My cane hung over my left hand as I now hold it, when I touched him with my right hand, and as he turned I took the cane in my right hand and began to talk to him. As I came out of the door I had my stick in my right hand; I changed it to my left hand, touched him with my right hand. There was not a word passed between us except what I have stated. Mr. Grinnell did not allude to any apology from me. It was just the sentence I have stated passed from me, and the mere syllable from him. I struck him instantly as soon as from his manner I saw he declined to make an apology. In fact, I did not expect an apology. I wanted to warn him—to call his attention to what I was doing. Colonel Pennybaker was immediately behind me. As I stepped out I do not know whether the door closed between him and me or not; I was giving my attention to Mr. Grinnell. I struck him several blows, I do not know how many. It was a small ratan. I did not intend to beat or bruise Mr. Grinnell, or to use any more violence than I could avoid. When the ratan broke I took him by the arms and pushed him back, not intending, however, to strike him. He stopped for a moment and said, "I do not want to hurt you." Said I, "You are very

kind ;" and I used very emphatic language which I need not repeat here. I was very angry. When he said, "I do not want to hurt you," I replied, "You are very kind ; I do not want to hurt you, and I did not intend to ; I want to disgrace you for your effort to disgrace me in the House." That was all, except Mr. Grinnell repeated those words three or four times. Somebody touched me at the elbow ; it might have been Colonel Pennybaker. I did not know there was any one there of my acquaintance except Colonel Pennybaker. At the time I saw Senator Saulsbury the thing was all over, and he was looking on very serenely. He did not seem to be excited. I did not speak to him ; I had not spoken to him for two weeks, and I had no idea he was there until the thing was over. The statement of Mr. Grinnell that I raised my hand to draw a weapon is an entire mistake on his part. It is an entire mistake on his part that he caught me by the coat before I struck him. There was no reason for his doing it, for I never carry weapons. I made no attempt to draw one ; and there was not time for him to have caught me by the collar.

By the CHAIRMAN :

Question. You said in connexion with declaring that you did not want to hurt Mr. Grinnell that you "meant to disgrace him." Disgrace him for what?

Answer. For his effort to disgrace me in the House. It all had reference to that matter. I have no concealment in the matter.

By Mr. WILSON :

Question. Will you state all the language you used on that occasion ?

Answer. That would be impossible ; I could not state precisely all I said.

Question. State all that occurred and all that you said as nearly as possible.

Answer. I should dislike to put on paper what I said ; I was excited and angry.

By Mr. WILSON :

Question. I would prefer to have the language used.

Answer. When Mr. Grinnell let go of my arm, I denounced him ; I told him he was very fierce in the House ; and said I, "Now look at you, you damned cowardly puppy," or something of that sort.

Question. Was that all ?

Answer. No ; I said such things as that several times. I am very sorry to say it over again now, for I have got over my anger and excitement.

Question. Did you use any oaths or profane expressions in another form ?

Answer. Yes, sir, I did.

Question. State what other forms ?

Answer. I told him that he was a damned scoundrel ; that he had taken advantage of the rules of the House to commit an outrage upon me and to attempt to disgrace me ; that I would rather have lost my right arm than to have disgraced the place I was in by striking him or having any difficulty with him there.

Question. Was that conversation on your part somewhat interlarded with profanity ?

Answer. I think I put in a "damn" wherever it would strengthen my language and give expression to my feelings.

Question. It was pretty strong and pretty profane, was it not ?

Answer. There was not much profanity in it. There were some "damns." I think my language was very harsh—harsher than I would use except under great provocation like that.

By Mr. GRINNELL :

Question. I ask you whether it could not be possible you are mistaken in saying I did not take hold of your collar ?

Answer. I am entirely satisfied you did not at the time you stated. It is

possible you may have done so afterwards. I am sure you could not before. There was no reason for you to have done it, and no time to do it. I think you were taken some by surprise; while, although I was angry, I was doing what I came there to do, and therefore remember what occurred, perhaps, better than you do.

Question. I refused to make an apology, did I not?

Answer. No; you did not refuse to make an apology. When I told you I had been waiting four days for you to make an apology, you said, "What, what," or something of that sort. I repeated the same remark over tolerably low. I think parties standing by did not, perhaps, hear it. You then said, "What of it?" and instantly I struck you. I was waiting to strike you.

Question. Did I not refuse to make an apology?

Answer. You did not refuse in words. I took your language to be a refusal.

Question. Did I not state distinctly that I had no apology to make?

Answer. No, sir.

By the CHAIRMAN :

Question. Was any language used in the House to which you take exception, and for which you intended to inflict chastisement, except that which appears in the Congressional Globe on the Tuesday morning after the discussion took place?

Answer. I do not think the language used appears there in its full strength. In substance it does appear. In my opinion, a good deal that Mr. Grinnell said is not there. I remember looking to see whether he had softened his language in any manner in the Globe. The main features of the expressions used were there, but, I think, not all the expressions.

Question. It was, however, the language used on that occasion that induced you to commit this assault?

Answer. Unquestionably. I did not consider the language used by Mr. Grinnell on that occasion as within the limits of legitimate debate, or within the privileges of the House. I did not think any breach of privilege, however, would justify me in assaulting him there. I would have suffered anything rather than to have done it. I think Mr. Grinnell's language was beyond the rules, and that he had set aside the privileges of the House, so far as he was concerned, when he used it.

By Mr. BANKS :

Question. You had no other provocation for the assault?

Answer. None. I always understood Mr. Grinnell made the first attack upon me. He said I had disgraced my State before I even knew him at all.

WASHINGTON, *June* 29, 1866.

Hon. Willard Saulsbury sworn and examined.

By the CHAIRMAN :

Question. You will please to state what knowledge you have of the assault made by honorable Mr. Rousseau, of Kentucky, on the honorable Mr. Grinnell, of Iowa.

Answer. My answer to that question is this : On the Tuesday, I think, preceding the occurrence my brother, who is spoken of by one of the witnesses, came here in company with Mr. Dixon, from Dover, to visit me. On the day of this occurrence my brother staid in the Senate chamber until four o'clock, as nearly as I can recollect, when, upon invitation of Mr. Nicholson, and he went over

to the House of Representatives. As he left, the understanding between him and myself was, that if the Senate adjourned before the House, I should go over and meet him, and if the House should adjourn before the Senate he should return to me. The Senate did adjourn before the House, and I went over there. After a few minutes a motion was made to adjourn, and, in order to escape the crowd, we left immediately upon the motion being made. When we got into the rotundo we found that it was raining too hard to undertake to go down even with an umbrella; we went over to the east front, for the purpose of waiting there until the rain subsided or of getting a carriage. While Mr. Dixon was away looking for a carriage, my brother and myself were walking up and down, as mentioned by one of the witnesses. My brother and I were at the end of the portico when I heard a noise. Our backs were then towards the parties.

I turned around and remarked, "That is General Rousseau caning some one." It was a little cane he had; we were some distance from them. We went up, I do not know how near, and saw several blows struck, when the cane broke. I think Mr. Grinnell remarked that he did not wish to hurt Mr. Rousseau. General Rousseau said to him, "You did not hurt me." I may be mistaken in what Mr. Grinnell said. That was my impression at the time, and that is my impression now. I heard Mr. Grinnell say, "You did not hurt me." General Rousseau said, "I do not want to hurt you." Whether the word disgrace was used, I do not know. My impression was that it was something of that kind. The other party replied, "All right, all right," several times. I do not pretend to give all the conversation. There were words used that it is not necessary to repeat. That is the substance of it. After a few words of that kind, Mr. Grinnell went off and General Rousseau went towards the rotundo. I wish to say, with the permission of the committee, that I have no knowledge of the transaction being intended. I never heard General Rousseau speak of the difficulty between him and Mr. Grinnell which occurred in the House until last Saturday, I think it was, when he called my attention to the fact that I was charged in the New York Tribune as being his backer. I had no more to do with the transaction than either one of you, gentlemen, and I may say most positively that any attempt made by any witness or any paper to implicate me in the transaction is entirely false. That is about the sum and substance of all I know about it. If I may say what I think, I do not think anybody was hurt, because Mr. Grinnell said several times that he was not hurt, and General Rousseau replied that he did not wish to hurt him. In making that remark, I of course do not intend to say that nobody's feelings were hurt.

By Mr. ROUSSEAU:

Question. Were you near Mr. Grinnell when he started down the steps?

Answer. I was not very near him. I saw him walk down the steps. I may have been ten or fifteen feet from him. I am not sure of the distance.

Question. Mr. Grinnell, in his testimony, remarked that he turned to the crowd and said that he supposed they were done with him, and walked away. I wish to ask you if any such thing occurred.

Answer. I did not hear the remark; or if I heard it I have no such recollection. He said something; the conversation was pretty rapid. He said something as he left; what it was I do not know. I did not hear it.

Question. Were you so situated that you would have heard such a remark addressed to the crowd?

Answer. I do not know that I can tell you. I did not hear all that was said. I was rather surprised at seeing what was going on, and walked up toward the parties. I did not wish to be considered as any participant in the matter. I did not bear Mr. Grinnell any ill feeling, but I will remark that I saw no evidence of any conspiracy on the part of anybody to interfere.

By Mr. GRINNELL:

Question. You said that I said something; you were not certain what it was?

Answer. Yes, sir.

Question. Then I may have made the remark mentioned and you not hear it?

Answer. I have no doubt that you might. There was considerable said; there was a good deal of excitement. I could not repeat all that was said.

Question. Did you see any one present who acted as if he were a friend of mine?

Answer. No, sir; I do not think I saw any one who acted as if he was a friend of either party.

Question. Did you suggest to General Rousseau to desist, or say anything about it?

Answer. No, sir; I never approached within ten feet. I have made it a rule through my life, when gentlemen get into difficulties of that kind, that if I can take care of my own interest it is about as much as I can do under such circumstances.

Leonard Jones appeared and stated that he declined either to be sworn or to affirm from conscientious scruples, having fought against sin the last forty years. He was examined as follows:

By Mr. HOGAN:

Question. Did you approach Mr. Grinnell in the House of Representatives at any time about the period of the difficulty, on that day or the day before?

Answer. I do not recollect the date; the chairman of the committee will recollect the date. It was the same day I made his acquaintance. I did approach Mr. Grinnell in the highest specific spirit I am capable of exercising.

Question. Do you recollect the day of the assault, or did you hear of the day?

Answer. Yes, sir; when I went down stairs and was sitting on the door steps, when General Rousseau came along, appearing to be under some mental excitement.

Question. Was that the day you spoke to Mr. Grinnell?

Answer. Yes, sir.

Question. Did you approach Mr. Grinnell and take hold of his coat?

Answer. I reckon he is mistaken about that.

Question. Did you say anything about Mr. Rousseau that day to him?

Answer. I approached him with a view of conciliation between them.

By Mr. RAYMOND:

Question. What did you say?

Answer. I can repeat the language. He was standing up; I asked him to take a seat and talk a little. He said he had some business, and he did not take his seat. I still detained him, and he seemed to feel that he was a member of Congress and I an outsider.

Question. You cannot remember anything you said to him?

Answer. Oh, yes; it was a general proposition of conciliation. I cannot remember the precise words, because I speak from principle, and not from fact, and that is the reason I have general hesitation to affirm. I saw that I had failed to get his attention, and I made one other appeal to him. Somebody had stated to me that he was a preacher, and I made this last appeal, that if he was a preacher he ought to have some conciliation. He said, very emphatically, "I am a member of Congress." I may say further, as I am on my feet, that I approached General Rousseau's room. We have long known each other at a

distance; we have never been cordial. After I had seen some report in the paper of the difficulty—I expected he was embarrassed from the manner in which I saw it in the paper—I went to him, for I am here upon a high mission to the government. I entered General Rousseau's room pretty early in the morning, and he was in no mood to speak. Just as I left the room I spoke to him, and told him that I had been informed of the difficulty; that I was with him in the present case. Of course I did not mean in any physical conflict; but he represents the district I was from, and I felt a very high obligation and responsibility in regard to the matter.

By Mr. THAYER :

Question. You said your mission to Mr. Grinnell was one of conciliation; did you apprehend there was to be a conflict?

Answer. No, sir; I did not dream of any harm.

Question. Why did you make your interview, then, with Mr. Grinnell one of conciliation?

Answer. I am a peacemaker. I did this in discharge of the obligations of my own conscience.

Question. What necessity did you suppose existed for your interference in the affair?

Answer. I thought there was every necessity as a peacemaker.

Question. Did you apprehend there would be trouble?

Answer. I wanted that General Rousseau's feelings should be harmonized without any conflict.

Question. Then I understand you to say that you apprehended a conflict?

Answer. No, sir, not by any means.

Question. Then why was it that you wanted his feelings harmonized without a conflict?

Answer. Because I thought there was danger that might take place in the land, and I desired that they should make up.

Question. Why did you go to Mr. Grinnell unless you thought there was some difficulty there?

Answer. I supposed that General Rousseau would probably abuse him in some way or other, and that it might lead to difficulty ultimately. I did not think of it until a moment before I was sitting idle in the room, having nothing to do until the House came together.

Question. Had you heard that there was likely to be any difficulty?

Answer. No, only from what I had seen in the papers; it was to the disadvantage of General Rousseau.

John Boyd sworn and examined.

Question. State what, if anything, you know in regard to an alleged assault by the honorable Mr. Rousseau on the honorable Mr. Grinnell.

Answer. I do not know anything in regard to the assault. The morning previous I was sitting in the House-hall in a seat beside Mr. Grinnell. Soon a man came down the aisle and got right opposite. Mr. Grinnell was seated in Mr. Stevens's seat, and I was in his seat. This gentleman stepped up to him on the opposite side from where I was sitting, and put his hand over his shoulder and touched him. I could not say whether he caught hold of his coat or touched his coat. He said he came to see him in regard to the Rousseau matter; that he was a peacemaker, or something of that kind. Mr. Grinnell told him, as nearly as I can recollect, that if General Rousseau had anything to say, to say it to him; that he had nothing to do with this man; he did not know him, or something of that kind. I was not paying very particular attention. He stepped back, and said he was a Kentuckian; that he came there to see Mr. Grinnell

in that matter; that he was a peacemaker. I commenced talking with Mr. Grinnell, and he went away.

By Mr. GRINNELL :

Question. You saw him distinctly lift up my coat ?

Answer. He took hold of your coat here, (taking hold of the collar in front.)

Question. What kind of coat was it ?

Answer. A linen coat I think it was.

By Mr. RAYMOND :

Question. Did you see anything in his touching Mr. Grinnell to indicate any other purpose than to attract his attention ?

Answer. I was sitting on the opposite side, and could not say whether it was to attract his attention, or what it was. He put his hand on his breast, and said he was a Kentuckian.

By Mr. ROUSSEAU :

Question. You remarked when you first began that you were so situated that you could not tell whether he took hold of Mr. Grinnell's coat or touched his coat ?

Answer. Yes, sir, I could not tell. He took hold or touched him on the collar in the front. I know he had his hand on the coat.

Question. I ask you again whether you were not so situated that you could not see whether this man touched Mr. Grinnell on his coat, or took hold of it ?

Answer. As I stated, I was on the left of Mr. Grinnell, and this Mr. Jones came down behind him and put his hand over his shoulder, and touched or took hold of his coat.

Question. Was his manner any other than that of a peacemaker? Did he not say he was a peacemaker ?

Answer. I did not suspicion that there was anything wrong in it until the affair that occurred afterwards.

Dr. John S. McGrew, sworn and examined.

By the CHAIRMAN :

Question. You may state what you know in respect to this transaction.

Answer. I do not know that I know a great deal. On the morning of the difficulty I called here at the House to see General Rousseau. A few days before—perhaps five or six—I had some business in New York, and was going there. General Rousseau told me if I would wait a few days for him he would go with me. I told him I would wait. I was waiting that morning to see him in respect to that matter. I think I got here before he did, and I remained some time to see him. A little while after the House met I sent for him. He came out, and I asked him when he was going to New York, saying that I must go on Friday. He said he did not know that he could go on Friday; that he would rather I would wait. I then said to him, "Are you very busy?" He said, "Yes;" that he had some bill he was watching, or some vote he wanted to give, or something of that kind. I invited him to go across and take a glass of wine with me. We went across and took a glass of wine together, returning again, and I went into the gallery. During this time he never opened his mouth about this disturbance between him and Mr. Grinnell. When the House adjourned, I went down stairs through the hall, and after going into the rotundo General Rousseau passed me. I spoke to him. He did not answer me, but kept on. I started right after him and walked out of the door. As he went out of the door from the rotundo

the door closed. I pushed it open after he went out. He was then in conversation with Mr. Grinnell. I had not seen Mr. Grinnell up to that time. I had known him by name, but I would not have known him by sight now had it not been for that occurrence. When I opened the door he was in conversation with Mr. Grinnell. I cannot say that I can give you correctly the conversation. I heard General Rousseau speak to him about some remarks he had made in the House; that he had waited for an apology. Mr. Grinnell made some answer which I did not hear distinctly. My impression at the time was that he said he had no apology to make, or something of that kind. Then I heard Mr. Rousseau make a remark, and as he did so raised his cane and struck him several blows—I do not know how many. His cane broke in pieces. Mr. Grinnell remarked to him, I think, "you have not hurt me." Mr. Rousseau remarked that he did not want to hurt him. I would not be sure, he said, "I do not want to hurt you; I want to disgrace you for your indecent language to me on the floor." I think there was some such sentence as that. Then he said something about not resenting it because he had too much respect for the House or the place they were in. That is about all. I think Mr. Grinnell caught General Rousseau either by the arm or by the coat, and that General Rousseau caught him during the *melee* and pushed him back against a column. He said, "Let go." Mr. Grinnell said, "Yes, sir, let go." They both let go, and in a moment or two a separation took place.

Question. I wish you to state if you had any arms on your person.

Answer. Yes, sir; I had a pistol—a small-sized pistol—about five inches in length, stock and all—a very small pistol.

Question. Was it loaded?

Answer. Yes, sir. I always carry it loaded. I never carry it any other way.

By Mr. THAYER:

Question. Have you that pistol with you now?

Answer. No, sir; I have it not with me. When I dressed myself this morning, I left it on my table in my room. I do not often do that. I usually carry that pistol. I had it before I had seen anything about the disturbance between Mr. Grinnell and Mr. Rousseau at all, or knew anything about it. I have some private business with some parties in the city. I have been here all winter trying to arrange it, and I have been threatened with personal violence by one of the parties. Since I have been here I have carried that pistol for my own protection. I knew nothing about this occurrence at all previously.

By Mr. ROUSSEAU:

Question. Where is your residence?

Answer. Cincinnati, Ohio.

By Mr. RAYMOND:

Question. You say you carried that pistol in consequence of threats of personal violence?

Answer. Yes, sir; mostly in consequence of that.

Question. Had you ever carried it before?

Answer. Yes, sir; I carried it frequently.

Question. Then you did not have it with you at that time for a specific purpose?

Answer. No, sir; I did not.

Question. Did you ever receive at any time, directly from General Rousseau or indirectly through other parties, any intimation of a collision between him and Mr. Grinnell?

Answer. I never heard General Rousseau mention Mr. Grinnell's name but once, and that was along last winter when they had a discussion. He remarked

that Mr. Grinnell's language was very hard to bear. I remarked to him that I knew it might be, but I said let these things pass without paying any attention to them.

Question. Did he reply to that?

Answer. Yes, sir. I think he said he intended to do that.

Question. Did any one else ever intimate to you after that time that probably he would assault Mr. Grinnell?

Answer. No, sir, I never heard anything of the case until the day it occurred.

Question. When you followed Mr. Rousseau from the rotundo that day was it with the expectation of any such occurrence?

Answer. He seemed to pass me without answering, and I followed him out more to know what was the matter; I thought he had changed very suddenly if he did it intentionally. I did not know whether he noticed me or not. He told me he would give me an answer about going to New York.

Question. Did you see Mr. Grinnell before the assault took place?

Answer. I did not know Mr. Grinnell; I had never seen him before to know him.

Question. Then when you followed Mr. Rousseau out you had no thought of a collision?

Answer. No, sir; none at all.

By the CHAIRMAN:

Question. Did you have an interview with Colonel Pennybaker that evening or that day with reference to this transaction?

Answer. Not until afterwards. Colonel Pennybaker was there and came up to General Rousseau at the same time I did. I know I stepped close to General Rousseau and told him to come away. I am not sure whether I told him before Colonel Pennybaker spoke to him or not; I went up to him with the intention of saying that. Colonel Pennybaker took his arm and walked off.

Question. Can you say you were the first person who followed General Rousseau out of the rotundo?

Answer. I do not think I was.

Question. But he had not raised his cane to strike when you got out of the door?

Answer. No, sir.

Question. Did you notice whether Colonel Pennybaker went out before you?

Answer. I cannot tell. I think Colonel Pennybaker was there on the portico when I came out, but I am not certain.

Question. But still blows had not been struck until you were present?

Answer. No, sir. I think I saw the first blow struck; I am certain I did.

By Mr. ROUSSEAU:

Question. How many feet were you behind me when I passed out on the portico?

Answer. I cannot tell how many feet. I should think, perhaps as far as from here to that looking-glass, (twelve or fifteen feet.)

Question. Were you walking fast or slow?

Answer. I walked tolerably fast.

Question. For the purpose of overtaking me?

Answer. Yes, sir; it was my object to overtake you.

Question. When you got to the door did you see Mr. Grinnell and myself?

Answer. Yes, sir; I saw you there in conversation with Mr. Grinnell. I did not know then that he was Mr. Grinnell, for I had never seen him to know him at all.

Question. You were then fifteen or twenty feet behind me, walking rapidly?

Answer. Yes, sir.

Question. Did you go straight out at the door?

Answer. Yes, sir.

By Mr. BANKS:

Question. Did it occur to you there was to be an assault when you followed Mr. Rousseau?

Answer. I did not look for an assault, because I did not know his purpose in going out.

Question. Did it occur to your mind that there might be any personal difficulty?

Answer. Mr. Rousseau appeared to be excited.

Question. Did it occur to you that there might be some personal difficulty?

Answer. I do not know that. I cannot say. I thought there might be something going on from his manner.

Question. Did it strike you at the moment there might be some personal difficulty, and was that the reason for your following?

Answer. No, it was not for that reason at all that I followed him. I followed him for the express purpose of knowing whether he was going to New York, and, further, to know why he passed me in the way he did, without answering me. I may say that I did suppose there was something wrong with him because he passed me in the way he did.

Question. But nothing occurred to you about a previous difficulty?

Answer. No, sir.

Question. How many persons were there at the time the first blow was struck?

Answer. I think fifty or sixty. There were forty persons there at least. I think I noticed them standing around.

Question. Standing within what distance?

Answer. Some of them were within three or four feet.

Question. How many were there you knew personally and can call by name?

Answer. I only knew by name two or three. Senator Saulsbury I have seen, although I was never introduced to him. I saw Colonel Pennybaker there and onew him. I saw Colonel Grigsby there and knew him. I do not recollect any kthers that I knew.

Question. Had it been customary to carry the weapon you speak of every day?

Question. Yes, sir; I carried it nearly every day.

By Mr. RAYMOND:

Question. In what pocket did you carry it at that time?

Answer. In my pantaloons pocket.

Question. Did you put your hand in that pocket during the affray?

Answer. No, sir; not that I recollect.

Question. You did not do it at any rate with the intention of using the pistol?

Answer. No, sir; I do not recollect having my hand in my pocket at all.

By Mr. GRINNELL:

Question. Did I have hold of Mr. Rousseau's collar?

Answer. I think you had one hand on his sleeve and the other across his breast or collar.

By the CHAIRMAN:

Question. Did you have that pistol in your pocket all the day before?

Answer. Yes, sir.

Question. Had you carried it every day for some weeks?

Answer. No, sir; sometimes I carried it two or three days, and some days I did not carry it, but left it in my room.

Question. Is it your custom when in Cincinnati to carry a pistol from day to day?

Answer. When I am in Cincinnati I very often carry a pistol.

Question. Is that an ordinary custom?

Answer. It is.

Question. Is it a custom adopted by persons in Cincinnati generally?

Answer. There is a great deal of it done in Cincinnati. I am a native of Ohio, born and raised there, and Cincinnati is my home.

By Mr. WILSON:

Question. Did you follow General Rousseau immediately as he passed out of the door from the rotundo to the portico?

Answer. Yes, sir; soon after he passed me.

Question. How long was it after he passed out before you passed out the door?

Answer. I do not think he was further from me than the length of this room before I started after him.

Question. How long do you think it was before you reached the door after he passed out?

Answer. I cannot tell you; it was a very short time.

Question. A few seconds?

Answer. Half a minute or something of that amount; just as fast as I could step up.

Question. As he passed out of the door it swung to by a spring, as I understood you?

Answer. Yes, sir.

Question. How many persons passed out after the general before you passed out?

Answer. I cannot tell you.

Question. How many do you think?

Answer. There were persons passing out all the time. I think he passed out right along with persons who were going out of the door at the time.

Question. Do you know any persons who passed out after he did, and before you passed out?

Answer. I did not notice any one that I knew.

Question. When you got out, Mr. Rousseau and Mr. Grinnell were in conversation, you say?

Answer. Yes, sir.

Question. And after you reached the portico, the blows were given by General Rousseau?

Answer. Yes, sir.

Question. Was there any cessation of those blows, or did he continue on until he broke his cane?

Answer. He continued until he broke his cane.

Question. And then quit?

Answer. Yes, sir.

Question. Did you notice whether Colonel Pennybaker passed out between you and General Rousseau?

Answer. I cannot tell you. I think he was out on the porch when I passed out. I am not certain. I saw him there during the affair.

Question. You followed up rapidly after the general had got out of the door, and got there, you say, within a half a minute?

Answer. No, sir; I do not so fix the exact limit of time. It was just as quick as I could walk.

Question. Did you make any remarks that evening after this occurrence to any person in relation to the matter?

Answer. Yes, sir, I did.

Question. Where was it you made the remark?

Answer. It was at the Ebbitt House, where I was stopping.

Question. Did you say anything on that occasion about your having a pistol?

Answer. I have heard that I did. I do not recollect anything further than this, that two or three gentlemen were there talking. Some of them I did not know. One, I think, was Mr. Morris, of New York. I have met him since. These parties were talking about the affair, and asked me the question if I had heard anything of it. I told them I had seen it; and then I gave them about the substance of the statement I have made here. I think somebody, perhaps Mr. Morris, asked whether there was any interference. I told him there was no interference. I made the remark that there was a party there who looked like he was going to interfere—a very large man. The question was asked me by some one, I think by Mr. McAllister, or by some of the party, or the remark was made that if there had been any interference there would have been a fight, or something of that sort. I said that, so far as I was concerned, I would not have allowed any interference with General Rousseau. I think that perhaps in the course of that conversation I did state that I had a pistol.

Question. And “would have used it if there had been any interference,” or words to that effect?

Answer. I do not know whether I made that remark or not. I do not recollect the exact conversation. There were a dozen there talking about it.

Question. Did you exhibit your pistol there at that time?

Answer. Not that I recollect. I have heard that it is so said. I do not think I did. I may have done it. I do not usually do such things as that. Although if I had a pistol I would tell you or anybody else who wanted to know.

Question. Did you not state at the Ebbitt House, in the presence of Mr. Morris, on that evening, that you had a pistol at the time of this occurrence, and that you would have used it if there had been any interference?

Answer. I may have said I would have used it if there had been any foul play, or if there had been any occasion to require it, perhaps.

Question. Were you there when General Rousseau commenced striking Mr. Grinnell?

Answer. Yes, sir.

Question. Why did you not interfere to prevent this assault?

Answer. I think I did interfere. I went up to General Rousseau, and I think I was the first man, perhaps, who took him by the sleeve and told him to come away.

Question. At what time was that?

Answer. After the cane was broken.

Question. Why did you not interfere before that time?

Answer. It was all over very quick. A man could hardly come up to do anything, and I did not feel like interfering at any rate.

Question. Then you were not disposed to interfere between the parties?

Answer. No, sir; I was not.

Question. But you were prepared to interfere with anybody attempting to interfere with the parties?

Answer. I had made no preparation. I am just that kind of a man that if General Banks, or General Rousseau, or any other gentleman that I know, was in a difficulty of that kind, I would not allow an outsider to interfere.

Question. That is not my question. I desire to know whether you were prepared to interfere with any person who interfered with the parties?

Answer. I am always prepared for that.

Question. And disposed to do it, if interference had taken place?

Answer. If there had been any foul play or occasion for it, I might have interfered. If any gentleman had walked up to separate them, I would have been satisfied. It was not my object to interfere with any such person. I do not wish you to understand that it was my intention to harm any one who would undertake to separate them quietly.

Question. Did you not state, in the presence of Mr. Morris, that you would have "interfered with any parties attempting to interfere," without the qualification of there being foul play?

Answer. I do not know that I did. I am not certain about it.

By the CHAIRMAN:

Question. Have you ever lived in Kentucky?

Answer. I lived in Kentucky while on duty in the army. I have served four years or better in the army, and during that time was in Kentucky fifteen or sixteen months.

Question. How long had you known General Rousseau?

Answer. I cannot say I have had a personal acquaintance with General Rousseau longer than perhaps ten or twelve months—perhaps not more than ten months. I had known him as a military man.

By Mr. THAYER:

Question. If Mr. Grinnell had drawn a pistol to defend himself on that occasion, what would you have done?

Answer. I would not have done a thing. I hold it to be the duty of every man who insults a gentleman to be prepared for himself; that it is his right, and that he ought to do it, and that would have been General Rousseau's look-out, and not mine.

Question. You would not have done anything with your pistol under these circumstances?

Answer. No, sir; I would not have done anything with my pistol at all in any case, unless some personal violence had been offered to myself. If there had been a violent attempt to interfere with General Rousseau, I might have tried to keep them off. If that had provoked personal violence toward myself, I might have defended myself with my pistol. My pistol was not carried with that intention, however, for I did not know anything about it at the time.

Question. Are you an acquaintance of Colonel Pennybaker, whom you have spoken of?

Answer. I have never seen him or known him until last winter in Washington.

Question. Do you live in the same house with him?

Answer. No, sir; I have been stopping all winter at the Ebbitt House. I do not know where he stops.

Question. Had you seen him that day before the assault?

Answer. No, sir; not before.

By Mr. HOGAN:

Question. Your meaning, I presume, is this: that had outside parties interfered in this matter, you were prepared to prevent it.

Answer. I would have endeavored to prevent it. I do not know that even then I would have used my pistol, unless some personal violence had been offered toward myself.

Question. I understand your statement to be something like this: that if Mr. Rousseau had assaulted Mr. Grinnell, or Mr. Grinnell had assaulted Mr. Rousseau, and either of them had drawn a pistol, you would not have interfered in the matter so long as the affair was confined to them; but if any assault had

been attempted, either upon Mr. Rousseau or Mr. Grinnell, you would have regarded that as an interference and would have attempted to prevent it?

Answer. I would; but even then I would not have felt justified in using a pistol. I have never used a pistol yet, except while I was in the army, against the common enemy; and I would have felt that I had no right to use it even under the circumstances I have now stated, unless some personal violence had been offered to myself. I did not know Mr. Grinnell when I first went on the portico. I have no feeling at all against Mr. Grinnell, and never had.

By Mr. GRINNELL:

Question. I wish to ask you whether you did or did not say, in the presence of Mr. Morris, that you had a pistol and would have used it if there had been occasion?

Answer. I might have said that. I do not deny it at all. But the occasion might have been as I have explained to you—that of personal violence being offered to myself.

Question. I wish to ask you whether you did not exhibit your pistol during that conversation in the presence of Mr. Morris?

Answer. That I cannot say. I do not think I did; I may have done it.

Question. If Mr. Morris says you did it, would you believe you did it?

Answer. Yes, sir; I should have no reason to doubt the truth of such a statement made by Mr. Morris.

Question. You are a friend of General Rousseau?

Answer. I am an acquaintance of Rousseau's, and a friend of his.

Question. You stated, I think, that you did not interfere?

Answer. I did interfere in the affair after the cane was broken. I went up, and I think I was the first man who took hold of General Rousseau and told him not to quarrel longer and asked him to leave.

Question. You would not have interfered, if you could, previously?

Answer. No. I might have gone up there and got a blow on my head; I do not know. General Rousseau was dealing them out pretty fast.

Question. Would you have expected a blow from Mr. Rousseau?

Answer. I do not know that I would have expected a blow from him, unless he thought I was interfering and turned and gave me a blow in anger. He would not have done it in his cool moments at all.

By Mr. BANKS:

Question. Is it probable that if outsiders had interfered against General Rousseau you would have taken any part in the affair?

Answer. Oh, yes, sir; I would. As a friend of General Rousseau I would have done all I could to have prevented his injury.

Question. Suppose an outsider had taken part against Mr. Grinnell; is it probable that you would have interfered in his behalf?

Answer. If a second party had jumped into Mr. Grinnell I should have interfered, certainly. I do not make any bones in expressing my feelings in that regard. I did not know anything about Mr. Grinnell, but I would have done it readily.

By Mr. GRINNELL:

Question. Let me ask you, when you said in the presence of Mr. Morris that you would have used a pistol against anybody who would have interfered with General Rousseau, why you did not say the same with regard to me?

Answer. I do not know what I said in that conversation. I say now that generally I would have done it.

By Mr. ROUSSEAU:

Question. Did Mr. Morris say anything with reference to his own feelings about the matter?

Answer. Mr. Morris did make some remarks of that kind.

Mr. Grinnell objected to the witness stating what Mr. Morris said.

Objection overruled, on the ground that Mr. Grinnell had drawn out a part of the conversation, and it was proper that the whole should be stated.

Answer. I do not now recollect how he brought in the remark, or even who it was addressed to. There were other parties standing around, probably four or five, talking. He made the remark that he would have killed Mr. Rousseau if he had done anything of that kind to him.

Question. Was that after these remarks were made by you?

Answer. I cannot say positively whether it was before or after. I think I said something of the kind that has been stated in retaliation.

Mr. Rousseau made the following statement to the committee:

I wish, with the permission of the committee, to make this additional statement in reference to the matter testified to in respect to this man Jones. I never had a word of conversation with Jones in connexion with Mr. Grinnell, except when he was in my room on the morning stated, and wanted to talk to me about the matter as a peace-maker. I declined to say a word to him. I did not want to know whether Mr. Grinnell had arms or not. I never made any inquiry of any one with any such view. I believe I spoke to but one man about the matter before it occurred, and that was just before it occurred. I was unwilling to talk to my friends about it, because I thought they would dissuade me from it. If I had wished to consult any one, this man Jones would have been the last man on earth I should have selected. And I may remark that I suppose that, of all men on the face of the earth, Leonard Jones is the last man to hurt or injure any living being.

APPENDIX No. 1.

[Extracts from the Congressional Globe.]

HOUSE OF REPRESENTATIVES, FEBRUARY 3, 1866.

Mr. ROUSSEAU said:

* * * * *

And I will mention another case. A man by the name of Blevins in my town came home one evening and found his wife engaged in some controversy and collision with a negro woman who had been her servant—not one who had belonged to her as her slave. He took part with his wife, as I think any gentleman ought to have done, whether his wife were right or wrong. The negro woman complained to this agent of the bureau, and a couple of negro soldiers were sent there to arrest him and his wife. And because one of his little girls had said something in the matter an order was also sent for her arrest. The man came to me, supposing that I might be able to assist him. I asked the post commander how it happened such things were allowed. He said, "This Freedmen's Bureau, it is said, is over us all; what can I do?" I replied, "If I commanded this post I would know who it was who ordered the military to arrest the people without my knowledge, and I would stop it. While I was commandant I would do my duty. If the authorities did not like it, they could send me away." Early the next morning I went to the commandant's headquarters, and there I found Mr. Blevins and his wife and children seeking

protection against the Freedmen's Bureau, acting on the complaint of the negro woman.

Now, sir, I told the agent of that bureau then just what I thought and felt in reference to this matter. I said to him, "If you want to protect the freedmen of this community I am with you heart and soul; I will stand by you in all just measures; but if you intend to arrest white people on the *ex parte* statements of negroes, and hold them to suit your convenience for trial, and fine and imprison them, then I say that I oppose you; and if you should so arrest and punish me, I would kill you when you set me at liberty; and I think that you would do the same to a man who would treat you in that way, if you are the man I think you are, and the man you ought to be to fill your position here."

I tell you, sir, that no community of the United States can endure a system of this sort. Such have been the operations of this bureau under the old law. What will be its operations under this bill Heaven only knows. I cannot even imagine what a man may not assume the right to do under the provisions of this bill. If those who are to be appointed under this act should adopt the latitude of construction adopted by my venerable friend from Pennsylvania, [Mr. Stevens,] if they carry out his notions in reference to the force of the Constitution and the effect of the rebellion, they can find a warrant for anything they may wish to do.

HOUSE OF REPRESENTATIVES, FEBRUARY 5, 1866.

Mr. GRINNELL said :

* * * * *

Yet the gentleman from Kentucky (Mr. Trimble) says that the laws of Kentucky are honorable, just, and suited to the condition of that State, but does not give, what I waited to hear, illustrations. I charge that they are monstrous and damnable laws, such as would be a dishonor to the most barbarous nation on the face of the earth, and I regret to apply the sound political maxim that no State or nation is better than its laws. I would ask the gentleman why the legislature of Kentucky at its late session did not change or amend those laws, so that they might show that there was honor in the Kentuckian heart, that they were willing to mete out justice to all men? As the gentleman gives me his attention, I will wait for a reply if he has one to make.

Mr. TRIMBLE. I would be happy to reply to the gentleman if it did not interfere with his remarks.

Mr. GRINNELL. I desire an answer, and shall not regard it as an interference with my remarks, as I am speaking without a manuscript.

Mr. TRIMBLE. Will the gentleman repeat his question?

Mr. GRINNELL. The gentleman says the laws of Kentucky are honorable, just, and suited to the condition of the people of that State. I ask that gentleman why Kentucky has not repealed or amended or changed her barbarous laws?

Mr. TRIMBLE. What barbarous laws?

Mr. GRINNELL. Those against the loyal black people of the State. For instance, that law which makes it a penal offence for a man who has worn the government uniform and fought our battles to go into that State.

Mr. TRIMBLE. * * * * * And having answered the gentleman, I desire to say that I do not wish to have any personal dispute with him. But it would seem that his remarks could be construed into something of that kind.

Mr. GRINNELL. My questions are personal and could not be otherwise.

Mr. TRIMBLE. And your denunciations of the State of Kentucky, were they personal?

Mr. GRINNELL. I was denouncing wrong and oppression and wickedness and crime.

Mr. TRIMBLE. Does the gentleman intend those denunciations to apply to me?

Mr. GRINNELL. Not to the gentleman, personally, but to the State that he is defending here. And not only himself, but his colleagues, who do the same here day after day. * * * *

And here I recall an incident. Not many years ago a fugitive from Kentucky, partly white, a young man, came to my house. After he had eaten his breakfast he looked round and saw a picture on the wall—a representation of the Saviour on the cross. Looking at that picture, he said: "What are they doing with that fellow up there?" "Why," said I, "that is the Saviour on the cross." "The Saviour?" "Yes—Jesus." "Oh, yes; I've heard of that fellow. He's dead now, I believe." Such is the ignorance which is the result of Kentucky's laws, forming a public sentiment which led it to be the truth of history, that before the rebellion Kentucky fattened her noble Durhams for northern shambles, and bred women and children and sent them down to the slave-markets of the south. * * * *

This discussion is not plainly promotive of the most commendable temper. The honorable gentleman from Kentucky [Mr. ROUSSEAU] declared on Saturday, as I caught his language, that if he were arrested on the complaint of a negro and brought before one of the agents of this bureau, when he became free he would shoot him. Is that civilization? It is the spirit of barbarism, that has too long dwelt in our land—the spirit of infernal regions that brought on the rebellion and this war. * * * *

History repeats itself. I care not whether the gentleman was four years in the war on the Union side or four years on the other side; but I say that he degraded his State and uttered a sentiment I thought unworthy of an American officer when he said that he would do such an act on the complaint of a negro against him.

Mr. SMITH. I deny that my colleague made any such statement.

Mr. GRINNELL. I occupied the Speaker's chair when the gentleman's colleague was speaking, and I heard the words; but the gentleman has seen fit, like other gentlemen, to withhold his speech for revision, and I cannot, therefore, refer to it. I have no desire to do him the least injustice or impugn his honor. * *

If the gentleman means to say that Kentucky is the only State whose sons do not turn their backs in the day of danger, then I apprise him that there are other States northward whose sons I defend from cowardice. It is not for me to boast that I belong to the profession of gory Mars, and I have not had much experience in fast running, but trust I have a comfortable amount of that quality which means standing still and both awaiting and meeting the consequences of my acts and words at home and abroad.

JUNE 11, 1866.

[Printed as reported by the official reporter of the House.]

Mr. WINDOM resumed the floor.

Mr. GRINNELL. I ask the gentleman to yield a few moments for a personal explanation.

Mr. WINDOM. Certainly.

Mr. GRINNELL. Mr. Speaker, it is with the greatest reluctance that I rise to say anything which might seem personal. I have been a member of this House for three sessions, and in all that time I have had no personal contest, and no unkind feeling towards any person in the House. I claim to be a man of peace. I claim first to be a gentleman. But, sir, when any man, I care not whether he stands six feet high, whether he wears buff and carries the air of a

certain bird that has a more than usual extremity of tail, wanting in the other extremity, says that he would not believe what I utter, I will say that I was never born to stand under an imputation of that sort.

The gentleman begins courting sympathy by sustaining the President of the United States preparatory to his assault upon me. Now, sir, if he is a defender of the President of the United States, all I have to say is, God save the President from such an incoherent, brainless defender, equal in valor in civil and in military life. His military record! Who has read it? In what volume of history is it found?

Some time ago the gentleman asked some of us, "What did you do in the rebellion but make speeches?" And he told us that he was in the field and got some little reputation with half-way-secession Kentucky. But where was he in any great fight? Ask General Grant, or any of the leading officers. Where was he in the great fights? Ask General Grant if you want his private opinion about him. Go to the general officers; and since he has alluded to Iowa, I will give the opinion of a leading officer from that State, for not two weeks ago he told me that when there was a noise in camp the men said it was either a rabbit or General Rousseau. He the defender of the soldiers of Iowa! Sir, they want no such defender; they want none of his defence. He has not led them in the battle, and it is all pretence; it is the merest mockery; it is the merest trickery, the merest blowing of his own horn, for him to say that he led our soldiers. Where was the deadly hail when they were under his command? But he comes here to traduce an humble person like myself. In the first place, he charged me with saying what I never did say. When he went down to make a speech to the Fenians in New York he is reported to have said this: "As I said on the floor of Congress on one occasion, as a fling was made at my native State by a pitiable politician from Iowa. (Hisses.) You will excuse me for giving his name, but I believe it was one Grinnell."

It was "one Grinnell" that he alluded to. But I never made any fling at Kentucky. That is my name. I am so called and so known where I live. But that is not all. He was not content with using my name, but he refers to the honorable gentleman from Pennsylvania, Mr. Stevens, in these terms: "I say that man is a miscreant, and I cannot find words to express my disgust and contempt for him." To whom does that relate? To a member of this house! And here he stands up, six feet and over, calling himself a buttoned-up general officer.

Mr. HARDING, of Illinois. Is this sort of debate in order?

The SPEAKER. The gentleman from Iowa had permission to make a personal explanation. If the gentleman raises the question as to personalities, the Chair will decide it.

Mr. ROUSSEAU. Shall I be held responsible for newspaper reports?

The SPEAKER. The Chair cannot answer that question.

Mr. BANKS. I do not understand that in giving consent to the gentleman from Iowa, the House gave consent to him to make personal allusions, which are not justified by the rules of the House.

The SPEAKER. They do not; but it is the rule, as the gentleman well knows, having occupied the chair himself, that when leave is granted to a member to make a personal explanation, the Chair does not check personalities, but waits for some member to make the point of order.

Mr. BANKS. I understand the gentleman's privilege to be to state what he regards necessary to explain his own position.

The SPEAKER. If the gentleman from Massachusetts makes the point of order on the gentleman from Iowa, the Chair will decide it.

Mr. BANKS. I do make the point of order.

The SPEAKER. The Chair sustains the point of order, and decides that the remarks of the gentleman from Iowa are personal and out of order.

Mr. ROUSSEAU. If the Speaker does not protect me from such remarks, I must protect myself.

Mr. GRINNELL. I was alluding to remarks made by the member from Kentucky. If he says he did not make those remarks, of course I have nothing further to say. I refer to this in reply to the premeditated assault that has been made upon me.

Mr. ROUSSEAU. I did not say that Thaddeus Stevens is a miscreant, and there is no evidence of it.

Mr. GRINNELL. The evidence I find in the reports of the New York newspapers.

Mr. ROUSSEAU. What I said was, that the man who placed himself between the recently contending sections to keep them apart was a miscreant. I did not say that Mr. Stevens was a miscreant.

Mr. GRINNELL. I supposed that any gentleman who quarrelled with his barber, and was backed off, would make just such a denial.

Mr. ROUSSEAU. I say again, that if the Speaker cannot protect me, I intend to protect myself. I insist that the gentleman be confined to the rules of parliamentary order.

The SPEAKER. The Chair sustains the point. The gentleman from Iowa is out of order in this course of remark, and, as the gentleman has been twice called to order, the Chair will check him if he again violates the rules.

Mr. GRINNELL. Mr. Speaker, I was proceeding to say that the charge that I have insulted Kentucky, which is made the ground of a fling at me, is altogether a mistake. I never insulted Kentucky. I did say that when the gentleman from Kentucky said that he would shoot an officer in the discharge of his duty, he made a remark unworthy, as I thought, of his State and of a United States officer. That I fastened upon the gentleman, and that I regard as the occasion of his remarks to-day. I proved, too, what I said on that subject.

Now, sir, I wish to deny any unfriendliness towards the gentleman or towards the State of Kentucky. I deny that I ever made any remark which could be construed to mean anything unfriendly in that respect. So far from that being the case, I have held Kentucky in high regard. I have held in high regard the gentleman who preceded in Congress the gentleman from Kentucky who has spoken to-day. His predecessor writes to me that he will be returned here by five or ten thousand majority.

Now, sir, why should I speak of this matter? Certainly not because I believe that my people would doubt my word. Sir, allusion has been made to the soldiers of the different States. I am proud to say that I represent a district that sent thirteen thousand men into the army. Can the gentleman say as much? I did speak something about the men from Kentucky fighting on both sides. Sir, I have been sent here by a majority of seven thousand; and I do not go to the State of Kentucky for indorsement, nor do the soldiers of Iowa. Their record is made, and it was not made under the leadership of any man from Kentucky. It was made under the leadership of their own colonels and generals, and under General Grant and General Sherman. When the gentleman gets up here and claims the honor of having led the Iowa soldiers, I say that they were not so led; that they spurn such an intimation; and in this I mean nothing personal.

Mr. Speaker, this is a painful exposition. But I am not responsible for it. When I make an assault, I expect to receive an assault in return. I have never assaulted any man, and therefore I am not in the habit of receiving assaults in return. I have never risen here to question the integrity or doubt the veracity of any gentleman on this floor. But for the fact that my personal integrity was assailed and that my words were misquoted, I would not have risen here to-day. I have alluded to what was said in regard to me. The gentleman remarked that he did not care a fig about what I said; but

when he goes and proclaims the matter in a great city in the presence of thousands of people, I conclude that he does not rest altogether well satisfied under the well-proven charge of having declared that he would shoot an officer of the United States under certain circumstances. And then the gentleman whines off with a woman's plea, taking refuge under feminine skirts, as a certain other gentleman went off in disguise.

The SPEAKER. The Chair thinks that the remarks of the gentleman are out of order.

Mr. GRINNELL. I have nothing further to say

APPENDIX No. 2.

[Extracts from the Congressional Globe.]

TUESDAY, *February 6, 1866.*

Mr. Speaker, there is to-day devolved upon us—I care not who decries it; I will not evade it—a high, solemn, and religious duty. We should be worse than barbarians to leave these people where they are, landless, poor, unprotected; and I commend to gentlemen who still cling to the delusion that all is well to take lessons of the Czar of the Russias, who, when he enfranchised his people, gave them lands and school-houses, and invited schoolmasters from all the world to come there and instruct them. Let us hush our national songs; rather gird on sack-cloth, if wanting in moral courage to reap the fruits of our war by being just and considerate to those who look up to us for temporary counsel and protection. Care and education are cheaper for the nation than neglect, and nothing is plainer in the counsels of Heaven or the world's history:

“There is the moral of all human tales;
’Tis but the same rehearsal of the past.
First freedom, and then glory; when that fails,
Wealth, vice, corruption—barbarism at last.
And history, with all her volumes vast,
Hath but one page.”

This discussion is not plainly promotive of the most commendable temper. The honorable gentleman from Kentucky [Mr. Rousseau] declared on Saturday, as I caught his language, that if he were arrested on the complaint of a negro and brought before one of the agents of this bureau, when he became free he would shoot him. Is that civilization? It is the spirit of barbarism, that has too long dwelt in our land, the spirit of infernal regions that brought on the rebellion and this war.

Mr. SMITH. Will the gentleman allow me a moment?

Mr. GRINNELL. I will yield for a question.

Mr. SMITH. I do not want to ask a question; I merely wish to make a remark.

Mr. GRINNELL. I decline to yield unless for a question.

Mr. SMITH. I wish to say that my colleague [Mr. Rousseau] does not belong to that class of men that the gentleman from Iowa speaks of. He served in the Union cause four years during the war.

Mr. GRINNELL. History repeats itself. I care not whether the gentleman was four years in the war on the Union side or four years on the other side; but I say that he degraded his State and uttered a sentiment I thought unworthy of an American officer when he said that he would do such an act on the complaint of a negro against him.

Mr. SMITH. I deny that my colleague made any such statement.

Mr. GRINNELL. I occupied the speaker's chair when the gentleman's colleague was speaking, and I heard the words; but the gentleman has seen fit, like other gentlemen, to withhold his speech for revision, and I cannot, therefore, refer to it. I have no desire to do him the least injustice or impugn his honor.

Mr. SMITH. I will only say that my colleague did not say so.

Mr. GRINNELL. I am casting no reflection on the gentleman's colleague at all. I am ready to yield my preferences and co-operate with all sections, knowing that we rise or fall together in national character. I would have nothing partial or sectional, nor by a word or act hinder a State in the march to the noble position which her generosity or heroism may give title. To even that State, which is so willing to receive a nation's dispensations to her poor, I would give a proud and commanding position among our commonwealths.

I now, to show my regard for a gallant gentleman, yield the remainder of my time to the gentleman from Kentucky, [Mr. McKee.]

WEDNESDAY, February 7, 1866.

Mr. ROUSSEAU. I desire, Mr. Speaker, to make a personal explanation. Before doing so I will ask the Clerk to read a paragraph which I have marked in the report of yesterday's debate, as published in the Daily Globe of this morning.

The clerk read as follows :

"Mr. GRINNELL. History repeats itself. I care not whether the gentleman was four years in the war on the Union side or four years on the other side ; I say that he degraded his State and uttered a sentiment I thought unworthy of an American officer when he said that he would do such an act on the complaint of a negro against him."

Mr. ROUSSEAU. Mr. Speaker, I did not use the language imputed to me by the member from Iowa, [Mr. Grinnell.] And I pronounce the assertion that has just been read, that I have degraded my State and uttered a sentiment unworthy an American officer, to be false, a vile slander, and unworthy to be uttered by any gentleman upon this floor.

THURSDAY, February 8, 1866.

Mr. GRINNELL rose to a personal explanation, and said—

Mr. Speaker: The member from Kentucky [Mr. Rousseau,] who used unparliamentary language in reference to myself, is, I observe, in his seat, and I embrace the first opportunity since the publication of his speech to show him what my *animus* toward him was in the remark I made, and "that I had no desire to do him injustice or to impugn his honor." Here is his own language in the Globe. It presents the question of fact, and I read it :

"If you intend to arrest white people on the *ex parte* statements of negroes, and hold them to suit your convenience for trial, and fine and imprison them, then I say that I oppose you; and if you should so arrest and punish me, I would kill you when you set me at liberty."

Here is the person to whom the member referred. I read from his answer to a question put by the chairman of the select committee :

"I refer to Colonel McCaleb, as one of the men connected with the Freedmen's Bureau in Kentucky, and he is the man whom I told that if he undertook to arrest me and my family as others had been arrested and punished I would kill him."

I give the member the full benefit of an explanation of his declaration that he would kill a white officer acting under oath and in the discharge of his duty, if that is a less unworthy act than to shoot an American citizen of African descent. That may not have been degrading to his State, and whether it was, as I said, language unbecoming an American officer is a question which I shall refer to the gallant soldiers of the State of Iowa who never fought, thank God ! but on one side, and it may properly be decided by the code of the first of American generals, and referred to the greatest of American captains, the Lieutenant General of the United States.

I have nothing more to add, only to repeat that my *animus* toward the member was the kindest. I criticized barbarous laws and his language from a sense

of duty, and I have given his own language in justice to him, although he first used the unparliamentary language toward me, which, as I repeat, I regarded as no personal offence.

Mr. ROUSSEAU. Mr. Speaker, I cannot allow the gentleman to become defender of the troops from the free States. I simply wish to say that I have made no reflection upon the soldiers of the various States. I have fought with them, sir, and I only wish that the gentleman from Iowa had been willing to be present to see how bravely and gallantly the troops from his own State and all the free States deported themselves in time of battle.

[Extract from Mr. Rousseau's speech of June 11.]

I said, sir, awhile ago, that flings had been constantly made at my native State, in my hearing, upon this floor; and last and least of all things and everybody, let us give a moment's attention to the member from Iowa, Mr. Grinnell, who first assailed her here. Shortly after Congress assembled he assailed my State and myself; he charged that I had degraded my native State by saying that I would defend my family against the agents of the Freedmen's Bureau. That member was pleased to say on the floor, in answer to a suggestion of my colleague, Mr. Smith, that he did not know whether I had fought four years on the rebel side or on the federal side in the late war.

I had under my command and fighting under me from that member's State some of the bravest troops from any State in the Union. I was in the war from the beginning of it until the end. In the northwest I was known to have been in the federal army; but that member said he did not know whether I was on the rebel or the federal side. I do not suppose a member in the House believed one word of what he said.

Mr. GRINNELL. Mr. Speaker—

Mr. ROUSSEAU. No, sir; I cannot be interrupted now. I wish to say that when a member can so far depart from what everybody believes he ought to know, and does know is the truth, it is a degradation, not to his State, for he cannot degrade her, but to himself.

* * * * *

Mr. WINDOM resumed the floor.

Mr. GRINNELL. I ask the gentleman to yield a few moments.

Mr. WINDOM. Certainly.

Mr. GRINNELL. Mr. Speaker, it is with the greatest reluctance that I rise to say anything which might seem personal. I have been a member of this House for three sessions, and in all that time I have had no personal controversy save with the member from Kentucky, and no unkind feeling toward any person in the House. I claim to be a man of peace, and to demean myself as becomes a gentleman. But, sir, when any man, I care not whether he stands six feet high, whether he wears buff and assumes the air of a certain bird that has a more than usual extremity of tail, wanting in the other extremity, says that he would not believe what I utter, I will say that I was never called to stand under an imputation of that character in the company of gentlemen.

The member begins courting sympathy by sustaining the President of the United States, preparatory to his assault upon me. Now, sir, if he is a defender of the President of the United States, all I have to say is, Heaven save the President from such an incoherent defender.

But his military record, who has read it? In what volume of history is it found?

Yet some time ago the gentleman asked some of us, "What did you do in the rebellion but make speeches?" And he told us that he was in the field, and made sacrifices with regulars, &c. Since he has alluded to Iowa, I will give the opinion of a leading officer from that State, for not two weeks ago he told me that when there was a noise in camp, the men said, it is either a rabbit

or a general R. He the defender of the soldiers of Iowa! Sir, they want no such defender; they need none of his defence. He has not led our regiments in campaigns, and it is all pretence; it is the merest mockery; it is the merest trickery, the merest blowing of his own horn, for him to say that he led our soldiers to victory in the deadly hail under his command. But he comes here to traduce an humble person like myself. In the first place, he charged me with saying what I never did say. When he went down to make a speech to the meeting in New York, he is reported to have said this:

"As I said on the floor of Congress on one occasion, as a fling was made at my native State by a pitiable politician from Iowa. [Hisses.] You will excuse me for giving his name; but I believe it was one Grinnell."

It was "one Grinnell" that he alluded to. But I never made any fling at Kentucky. But that is not all. He was not content with using my name, but he refers to an honorable gentleman of this House in these terms: "I say that man is a miscreant, and I cannot find words to express my disgust and contempt for him." To whom does that relate; to a member of this House?

MR. GRINNELL. Mr. Speaker, I resume to say that the charge that I have insulted Kentucky, which is made the ground of a fling at me, is altogether a mistake. I never insulted Kentucky. I did say that when the member from Kentucky said that he would shoot an officer in the discharge of his duty, he made a remark unworthy, as I thought, of his State and of a United States officer. That I fastened upon the member, and that I regard as the occasion of his assault to-day. I proved, too, what I said on that subject.

Now, sir, I wish to deny any unfriendliness toward the member or toward the State of Kentucky, and that I ever made any remark which could be construed to mean anything unfriendly in that respect. So far from that being the case, I have held Kentucky in high regard, her early history and statesmen.

Now, sir, why should I speak of this matter? Certainly not because I believe that my constituency would doubt my word, but allusion has been made to the soldiers of the different States. I am proud to say that I represent a district that sent thirteen thousand men into the army. Can the gentleman say so much for his district of which he boasts? I did speak something about the men from Kentucky fighting on both sides; but the record of Iowa soldiers is unquestioned, and it was not made under the leadership of any Kentucky general on this floor. It was made under the leadership of their own colonels and generals, and under General Grant and Generals Sherman, Sheridan, and others.

Mr. Speaker, this is a painful exposition. But I am not responsible for it. When I make an assault, I expect to receive an assault in return. I have never assaulted my equals and associates, and therefore I am not in the habit of receiving assaults in return. I have never risen here to question the integrity or doubt the veracity of any gentleman on this floor; and but for the fact that my personal integrity was assailed and that my words were misquoted, I would not have risen here to-day. I have alluded to what was said in regard to me. The gentleman remarked that he did not care a fig about what I said; but when he goes and proclaims the matter in a great city in the presence of thousands of people, I conclude that he does not rest altogether well satisfied under the well-proven charge of having declared that he would shoot an officer of the United States on duty under certain circumstances. And then the member whines off with a woman's plea, taking refuge under feminine skirts, as a certain other gentleman in rebeldom went off in disguise.

* * * * *

MR. ROSSEAU. I hope now that I have heard the last of the member from Iowa. I hope I shall never have occasion to recur to the subject again. Whatever glory he has gained in this contest I am content he should wear.

MR. GRINNELL. The occasion is no fault of mine.

JAMES C. COOK.

[To accompany H. Res. No. 760.]

JULY 6, 1866.—Ordered to be printed.

Mr. J. H. HUBBARD, from the Committee on Patents, made the following

REPORT.

In the matter of the petition of James C. Cook, for relief as to time of filing application for renewal of patent, the committee report:

That the petitioner obtained letters patent for fourteen years from the 27th July, 1852, on an invention for forming button-backs and affixing the eyes thereto. That in consequence of difficulties in introducing the improvement into use, and of an error in the original specification, he was unable to obtain any material benefit of the invention till the 7th day of April, 1863, when the same was reissued on an amended specification; since which time he has realized some advantage, but no full compensation for his time and expenses. The term of said patent will expire on the 27th day of July next. In May last the petitioner filed an application to the Commissioner for an extension; but on an examination it was found the application should have been filed some six or seven days earlier, and the Commissioner properly declined to entertain the same. The petitioner accidentally mistook the time of expiration of the patent, which mistake was occasioned by the fact that the patent had been out of his hands for some two years, to be used in a law suit, and by the fact that the parties having possession failed to give him correct information of the time it would expire.

The committee being of opinion that the petitioner ought to have leave to apply to the Commissioner for an extension, offer the accompanying resolution and recommend its passage.

KOONTZ vs. COFFROTH.

JULY 9, 1866.—Laid on the table and ordered to be printed.

Mr. McCLURG, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the memorial of William H. Koontz, contesting the right of the Hon. Alexander H. Coffroth to a seat in this house as a representative from the sixteenth congressional district of Pennsylvania, as more fully appears from the following resolutions adopted by the House at its present session, to wit :

“Resolved, That Alexander H. Coffroth, upon the certificates and papers relating to the election in the sixteenth congressional district of the State of Pennsylvania, has the prima facie right to the vacant seat from that district, and is entitled to take the oath of office and occupy a seat in this house as the representative in Congress from said district, without prejudice to the right of William H. Koontz, claiming to have been duly elected thereto, to contest his right to said seat upon the merits.

“Resolved, That William H. Koontz, desiring to contest the right of Hon. Alexander H. Coffroth to a seat in this house as a representative from the sixteenth district of the State of Pennsylvania, be, and he is, required to serve upon the said Coffroth, within fifteen days after the passage of this resolution, a particular statement of the grounds of said contest, and that the said Coffroth be, and he is hereby, required to serve upon the said Koontz his answer thereto within fifteen days thereafter, and that both parties be allowed sixty days next after the service of said answer to take testimony in support of their several allegations and denials, notice of intention to examine witnesses to be given to the opposite party at least five days before their examination, but neither party to give notice of taking testimony within less than five days between the close of taking it at one place and its commencement at another, but in all other respects in the manner prescribed in the act of February 19, 1851”—

submit the following :

The sixteenth congressional district of Pennsylvania is composed of the counties of Adams, Bedford, Franklin, Fulton, and Somerset. The election here contested was held on the second Tuesday of October, 1864.

It is agreed between the sitting member, A. H. Coffroth, and the contestant, W. H. Koontz, (see page 19, Mis. Doc No. 117,) that the official count of votes was, in the aggregate, 11,067 for A. H. Coffroth and 10,979 for W. H. Koontz, “as shown by the returns made by the boards of return judges of the counties of Somerset, Fulton, and Franklin of the home and soldiers’ vote of said counties; by the board of return judges of Bedford county of the home vote, and by a majority of the judges of said board of Bedford county of the soldiers’ vote thereof; and by a majority of the judges of the county board of return judges

of Adams county of the home and soldiers' vote of said county," giving by such count to A. H. Coffroth a majority of 88 votes.

The contestant alleged in his notice of contest, and claimed in argument, that said returns do not contain all the votes cast for member of Congress in said district, but that certain returns of soldiers' votes were not embraced in the count by the return judges of the counties of Bedford, Fulton, and Adams, and that of such uncounted soldiers' vote 258 were cast for W. H. Koontz and 99 for A. H. Coffroth, as shown by the following table, taken from the brief of the contestant:

		Koontz.	Coffroth.
No. 1.	Company H, 208th regiment, army of the James....	34	18
2.	Barracks No. 1, Soldiers' Rest, Washington, D. C....	58	29
3.	Company G, 205th regiment.....	8	2
4.	Mower hospital, United States, Philadelphia.....	1	
5.	Cuyler United States hospital, Philadelphia.....	1	
6.	McClellan United States hospital, Philadelphia.....	3	
7.	138th Pennsylvania regiment, Front Royal, Virginia.	32	1
8.	184th Pennsylvania regiment.....	39	21
9.	202d Pennsylvania regiment, White Plains.....	27	15
10.	21st Pennsylvania cavalry, City Point, Virginia.....	36	4
11.	210th Pennsylvania regiment.....	19	9
Total.....		<u>258</u>	<u>99</u>

The contestant further alleged, and claimed in argument, that sundry votes in Adams and Bedford counties were cast and counted for Mr. Coffroth—seventeen in Bedford and sixteen in Adams—which should have been rejected, and should now be deducted, because said votes were cast by paupers, who, he contended, had no right to vote under the laws of Pennsylvania.

The contestant also alleged and contended that, should the committee not sustain him in his view of the law, the seventeen votes of Bedford county should be deducted because said pauper votes were residents of other townships than the one in which they voted.

The contestant claimed two votes which had not been counted in district of Adams county, composed of townships Liberty and Hamiltonban.

The sitting member, Mr. Coffroth, on the other hand, alleged in his answer, and claimed in argument, that the votes returned from the various hospitals and camps named in the above table should not be counted for contestant, for reasons specifically set forth in each case, which will be considered, each in the order mentioned in said table.

Sitting member also alleged and claimed that other illegal votes were cast and counted for the contestant which should be rejected, which will be considered in due order.

Sitting member also, having denied in his answer each and every allegation of contestant, took issue as to the law and the facts in case of the votes of paupers in Adams and Bedford counties; this will also be considered.

It may be here remarked, that the contestant objects to the testimony of the sitting member that assails any of the votes cast and already counted, claiming that an allegation that all legal votes had been added and counted for contestant was an admission that all that had been counted were legal. The committee cannot see the correctness of the proposition or the justice in excluding any legal testimony that will tend to the purification of the ballot-box. When an admission is made, it must be construed liberally, and taken in connexion with the whole answer. The committee, therefore, overrule this objection of contestant to testimony.

Now, to the consideration of the points made, in their order.

Soldiers' votes in above table, No. 1, company H, 208th regiment, army of the James.—The testimony of three witnesses, O. E. Shannon, prothonotary of Bedford county, Moses A. Points, and Valentine Vondersmith, on pages 24 and 25 of Mis. Doc. No. 117, is positive and conclusive that the return of this company *was not received and counted* by the return judges. An inspection of the return of said company, properly certified by the prothonotary of Bedford county as a full and true copy, together with the poll-book, number and names of voters, and tally-list, each properly certified, found on pages 33, 34, 35, 36, 37, and 38, will show that said return and other papers were regular and legal, the very forms having been regarded.

In the absence of a certified copy of this return from the prothonotary of Fulton county, a remedy is introduced by contestant in the testimony of Joseph C. Long, (page 26, Mis. Doc. No. 117,) who testifies that 16 votes, named, were from Fulton county, and whose testimony is corroborated by that of Robert N. Shimer, on page 52, and by that of John A. Robinson, (pages 48 and 49,) and that the return of company H, (above named company,) for Fulton county, signed by same judges and clerks, was rejected by the return judges of Fulton county, there being nine votes for Mr. Koontz and six votes for Mr. Coffroth.

The committee are, therefore, clearly of the opinion that said votes should be counted—34 for Mr. Koontz and 18 for Mr. Coffroth, *less one* from Mr. Koontz, for discrepancy between return and rejected votes in Fulton county, as shown by the testimony of witnesses.

It is manifest that returns were sent to each county, Bedford and Fulton, that the votes might be counted in the counties to which the voters respectively belonged. The fairness and honesty of conducting the election is proved by Robert A. Shimer and John H. Wilt, (page 52,) and no attempt is made by sitting member to prove fraud.

No. 2. Barracks No. 1, Soldiers' Rest, Washington, D. C.—This vote, as claimed, 58 for Koontz and 29 for Coffroth, is proven by testimony of O. E. Shannon, prothonotary of Bedford county, (on page 25,) not to have been received nor counted by the return judges of Bedford county, and by the testimony of John A. Robinson, prothonotary of Fulton county, (pages 48 and 54,) not to have been received and counted by the return judges of Fulton county. On page 48, Mr. Robinson testifies: "There were only 22 soldiers' votes for William H. Koontz, and four soldiers' votes for A. H. Coffroth," and on page 54 he shows that neither in whole nor in part did those 22 votes include barracks No. 1.

The sitting member, in his answer, page 7, admitted Mr. Koontz had 58 votes and Mr. Coffroth 29 votes, but alleged that the return was *illegal* and *fraudulent*. But, in his argument, he did not claim that these allegations were true, but relied upon a conflict in the number of votes, 87, and number and names appearing on the list of names, pages 39, 42, and 45.

An examination of returns, pages 39, 42, and 45, will show that the voters were residents of two counties, Bedford and Fulton, and that a return was sent to Bedford county with a list of 48 names, and a certificate that Mr. Koontz had 58 votes and Mr. Coffroth 29 votes; and that a return was sent to Fulton county with a list of 37 names, but with no certificate that any votes were cast for either Mr. Koontz or Mr. Coffroth, or any other candidate for Congress; showing that 87 Bedford and Fulton county votes were added together for the congressional vote, and all returned to but one county of the same congressional district, Bedford county.

But the sitting member, in his argument, contended that these votes should be excluded: "First, because the voters were not in the military service; second, because they were not assigned to companies, or, if assigned, assigned to regi-

ments, because the return names no separate poll-book, and that the voting by regiments is illegal."

It is almost useless for the committee to state that the practice at least has been to regard drafted men as in the military service from the date of draft, and that they were considered deserters upon failure to report. For, in this case, the evidence is distinct that the men were "ordered to Washington city," "went into camp," "were designated and ordered to two regiments, 56th and 107th Pennsylvania volunteers," "were soldiers assigned to regiments, and on their way to the front." (See testimony of Anderson, Cooper, Smith, Akers, on pages 27, 28, 29, 30, and 31, Mis. Doc. No. 117.) The men were assigned to regiments, and were in actual military service under a requisition from the President of the United States, as all were who were in the volunteer service, and that such were entitled to vote. See section 1 of soldiers' voting law; see also section 2, which says: "When there shall be ten or more voters at any place who shall be unable to attend any company-poll, or their proper place of election, the electors present may open a poll," &c.

The objection of sitting member that "the soldiers' election law requires the polls to remain open at least three hours" is regarded by the committee as frivolous, when he makes no effort to prove that any voter was prevented from casting his vote, but only objects to votes that were cast, and when no attempt is made to prove fraud. Neither is there positive testimony that the polls did not remain open three hours.

This poll should be counted—Koontz, 58; Coffroth, 29.

No. 3. Company G, 205th regiment.—The vote of this company is counted by the sitting member—Koontz, 8; Coffroth, 2—as correct.

No. 4. Mower United States hospital, Philadelphia.—That this return, and those of Nos. 5, 6, 7, 8, 9, 10, and 11, above, eight in all, were rejected in Adams county. The evidence is to be found on pages 62, 63, 64, and 65, in testimony of William S. Cart.

The sitting member claimed that there was no certificate that the officers of election were sworn, nor a certificate that more than ten electors were present.

Should such certificate be required, in this case it does appear at the foot of page 102. The poll-book, certificate of oaths, number and names of voters, tally-paper, and return, certified by the secretary of the commonwealth, all appear on pages 102, 103, and 104. Therefore, the vote on this return from Adams county we count for Mr. Koontz.

No. 5. Cuyler United States hospital, Philadelphia.—The committee need not examine this return, notwithstanding all informality is cured by the testimony of the voter who swears he voted for Mr. Koontz. But the name of the witness is not mentioned in the notice to take depositions, as required by the law regulating contests in election cases, and of this the sitting member claims the benefit. We therefore deduct one, which is estimated for Mr. Koontz in the above table.

No. 6. McClellan United States hospital, Philadelphia.—The sitting member contends that there is no certificate that more than ten were present. Still, ten names do appear in number and names of voters, page 106. The sitting member also refers to two returns of the judges, one certified by the prothonotary of Adams county, pages 93 and 94, and the other certified by the secretary of the commonwealth, pages 105 and 106, and says in his brief, "It is argued that two defective and illegal poll-books or election returns make a perfect and legal one." It has not been so argued before the committee. But it is the duty of the committee to approach as nearly as possible the ballot-box, and, by an examination of all the testimony, see that no legal voter is deprived of his just right to the elective franchise.

We find in the evidence referred to the committee by the House two properly certified papers one, page 93, if taken by itself, defective, because the

certificates of oaths are wanting, under the rule adopted by the majority of the committee respecting the hospital return in the *prima facie* case of Koontz *vs.* Coffroth, but nevertheless evidence of what it contains, to wit, the poll-book and tally-paper, with signatures of the judges and clerks; the other, which is not in conflict with the first, poll-book, certificate of oath of officers and names and number of electors, signed by same judges and clerks. This makes the testimony complete. The last mentioned poll-book, &c., of itself, though informal, is substantially in compliance with the law, (see section 27 of soldiers' law as to informalities.) This committee and the House are not circumscribed by the formalities that regulate proceedings of a board of return judges. They can go to the ballot-box if necessary. In this instance, by looking at the two returns, no doubt remains of the fact that Mr. Koontz received three votes, which should be counted.

No. 7. 138th Pennsylvania regiment, Front Royal, Virginia.—Here two companies voted together, B and G. Believing the decision of the House was correct on this point, when it sustained the majority report in the *prima facie* case of Koontz *vs.* Coffroth, the language of that report is here given, as follows: "The returns for companies B and G, 138th regiment, show that these two companies voted together at one poll, and having the same election officers, both judges and clerks. The law, section 2, directs that a poll shall be opened in each company, and that all electors belonging to such company, and within one mile of the quarters, shall vote at such poll. The return shows officers of both companies participating in the election, indicating regular company organizations." Clearly a poll opened in each company would have caused two polls in two companies; whereas there was but one. But, while this was sufficient, on its face, to exclude the poll from count by the county return judges, and therefore could not be admitted for Mr. Koontz, on the *prima facie* case, the committee are still disposed and bound to respect the decision of the House in sustaining the decision of the committee, expressed in the majority report in said *prima facie* case, as follows: "How many of these objections might be removed by other evidence, on a full hearing upon the merits, the committee are not now called upon to say, nor do they know what the facts may be which relate to the validity of the elections so held, and as to which the returns appear to be so defective. But these returns, whether legal or not, are not proper to be considered on this investigation. When, on a contest on the merits, the facts may be fully developed, if any legal votes are found to have been omitted in the count, full and final justice may then be done both to the voters and to the respective claimants; but until such an investigation is had, the committee, on the question of the *prima facie* right to the seat, feel constrained to abide by those precedents and rules of law which experience has proved to be the safest guides in weighing and determining impartially questions of this nature."

This is now the "contest on the merits," and in developing "the facts" the committee find, from "other" legal testimony, pages 69 and 70, the depositions of witnesses, that the thirty-three (33) voters, as named in the returns, did vote; that they were all residents of Adams county; that "every man was required to have tax receipts, or prove their right to vote on age." This evidence of witnesses and the returns leave no room to doubt of the perfect fairness and honesty of the election. "It is recognized that every presumption ought to be in favor of fair popular elections." We must "look into their good faith and integrity; and if they are manifest, we are not to defeat the expression of the popular will, because of some slip in the minor details of the election, which does not prevent our ready ascertainment of what that will truly is." (See Parsons' Select Cases, vol. 2, pages 103 and 105.) Therefore a portion of the committee are inclined to believe that justice requires that this vote should be counted, Koontz 32, Coffroth 1; while others of the committee are inclined to the opinion

that the law is mandatory and requires that a poll should have been opened in each company, and therefore that it should not be counted. Whichever conclusion should be sustained by the House will not change the result in this case. It is contended here and elsewhere, by the sitting member, that if electors voted "on age," (that is, when between twenty-one and twenty-two years of age, and not required by the law of Pennsylvania, because of such age, to pay taxes,) the fact "on age" should appear on the poll-book.

That is required by the general election law, and the 28th section of the soldiers' law says, "All the provisions of the general laws of this State, so far as applicable, shall apply to all elections held under this act." That provision is not applicable to the soldiers' voting law because the forms are given for such voting in the law, and that form is dispensed with. Section 27 also says that "informality" shall not invalidate such election.

But in this case the sitting member does not attempt to prove that any voter between twenty-one and twenty-two years of age did vote, and the law presumes that sworn election officers discharged their duties, until the contrary be shown.

No. 8. 184th Pennsylvania regiment, Koontz 39, Coffroth 21.

The sitting member, in his answer, alleged that "said election is illegal and void, not being held in accordance with laws," and that "the persons voting were not qualified electors of the district." But he did not specify in what manner the laws were violated or electors not qualified. In his brief he seems to admit that all should be counted but one, as he says: "Rejected return of company K, 184th regiment, if counted, should be counted, Coffroth 21, Koontz 38."

In his argument he objected to the return because it contained a voter in Franklin county.

That objection cannot deprive the qualified voters of Adams county of their right, when a perfect return, as this is, is properly certified by the prothonotary. (Pages 89, 90, 91, 92, Mis. Doc. No. 117.)

But the certificate of prothonotary of Adams county is not evidence to us of vote in Franklin county. In the absence of other testimony we reject one vote from this return for Mr. Koontz, and count for Mr. Koontz 38, for Mr. Coffroth 21.

No. 9. 202d Pennsylvania regiment, White Plains.—In the argument, there was no objection made by sitting member to this count. In his brief there is no objection. On page 77, one judge only seems to have been sworn. This difficulty is removed by testimony of witnesses. (See pages 80, 81, and 82.) "The officers were all sworn." This poll is to be counted, Koontz 27, Coffroth 15.

No. 10. 21st Pennsylvania cavalry, City Point, Virginia.—By a reference to pages 83 and 84, we see that the judges and clerks were sworn by Captain James Mickley, who was a qualified voter, but not a judge or clerk of the election who are authorized by the law to administer such oath.

The sitting member claims this return should be deducted, because Captain Mickley was not an election officer. The soldiers' law, section 5th, says "the oath may be administered by judges or clerks." Others may administer. But Captain Mickley not being a public officer, had no legal right to administer the oath. But the judges and clerks became, by taking the oath in good faith, public officers de facto, for the purpose of conducting the election, and their acts are valid. This principle is laid down in 2d Kent, page 339: "In the case of public officers who are such de facto, acting under color of office, by an election or appointment not strictly legal, or without having qualified themselves by the requisite tests, or by holding over after the period prescribed for a new appointment, their acts are held valid as respects the rights of third persons who have an interest in them, and as concerns the public, in order to prevent a failure of justice."

The decision in the 36th Congress, (see Bartlett's Election Case, p. 313,) in the case of Blair *vs.* Barrett, is also in point. We find the following language in the report of the majority, which was sustained: "There was no evidence" (referring to certain precincts) "returned with the return of votes, now before the committee in any shape at the hearing, that the judges of election were sworn." "Had it appeared from the evidence that the election had been fairly conducted at these precincts, and there were no traces of fraud, no taint of the ballot box, the committee would not have been willing to have recommended a rejection of these polls. The honest electors should not be disfranchised and their voice stifled from a mere omission of the officers of election to take the oath of office." In the case before us there was not an omission, as we have seen. The evidence is, that "the election was conducted very strictly and fairly; inquiry was made as to age and payment of taxes. Those whom we were not positively certain were of age were sworn. The voters presented certificates showing the payment of tax within two years," &c. (See pages 87, 88, and 89.)

We are therefore clearly of the opinion that this poll should be counted.

No. 11. 210th Pennsylvania regiment, Koontz 19, Coffroth 9.—This is not objected to in argument of sitting member or in his brief, but is there counted.

It was rejected by return judges because the certificate of oath does not appear, although it appears in the caption of the poll-book, and an oath is signed by the judges and clerks, and the legal certificate of the prothonotary appears, pages 71 and 74. But all defects are cured by testimony of Edward Reece, page 75, "all were sworn." This should be counted Mr. Koontz 19, and Mr. Coffroth 9.

The district in Adams county composed of the townships of Liberty and Hamilton. The testimony of Mr. Wolf, page 212, is clear that, in the computation of the home vote for Adams county, this district was counted 155 for Mr. Coffroth, and 163 for Mr. Koontz.

In argument the sitting member, Mr. Coffroth, claimed that the law required each township to vote, each composing a district, and therefore that this whole vote should be rejected. The contestant produced the law organizing these two townships into an election district. (See Smith's Pennsylvania Laws, vol. 3d, page 449, section 5th, of "An act to erect the county of Adams into an election district.") The count should not, therefore, be rejected and deducted.

But, on the other hand, the contestant claims two additional votes because the certificate of election of the judges and inspectors of this district, properly certified by the prothonotary of Adams county, page 113, shows that Mr. Koontz received 165 votes, being two more than were counted.

These two votes should be given to Mr. Koontz.

The sitting member admitted that one Hezekiah Hite, a minor, voted for him.
* * * We therefore deduct one from Mr. Coffroth.

PAUPERS.

The contestant claimed that the votes of seventeen paupers in Bedford county and sixteen in Adams county should be rejected, and taken from the sitting member, because, first, as before stated, paupers have no right to vote; and second, because Bedford county voters were non-residents of the districts in which they voted.

The committee cannot reject the seventeen in Bedford county, because, although non-residents, the contestant has failed to prove that these votes were counted.

The committee cannot see why the sixteen in Adams county should be deducted from the count of the sitting member. Each State frames its own laws for the maintenance and care of its poor. The laws provide protectors for the poor, who,

"by reason of age, disease, infirmity, or other disability," become unable to work. With regard to the exercise of the elective franchise by such, the laws of Pennsylvania are silent. As they are not expressly deprived of the right, we cannot see why the unfortunate, provided for by the public, may not vote as well as if provided for by a parent, or a son—certainly no until the authorities of Pennsylvania shall have decided for themselves the law, for which they have had frequent opportunities; therefore we here make no deductions from the count of the sitting member. Before proceeding to consider the claims of sitting member for deductions of votes from Mr. Koontz, we recapitulate:

	Koontz.	Coffroth.
Give uncounted votes as in above table.....	258	99
	Koontz.	
Deduct from No. 1, company H, 208 regiment.....	1	
" " No. 5, Cuyler United States hospital....	1	
" " No. 8, company K, 184th Penn. regiment	1	
	—	3
	255	
Deduct vote of Hezekiah Hite from Mr. Coffroth.....		1
		98
Add uncounted votes in district composed of Liberty.....		
and Hamilton townships	2	
	257	
Deduct uncounted vote of Mr. Coffroth.....	98	
	159	

Deductions claimed by sitting member, not considered above.

Evidence introduced by sitting member commences page 139 of Mis. Doc. No. 117.

ADAMS COUNTY.

On page 212, Henry G. Wolf, a clerk for return judges, testifies (in his own language) that, "this paper, now before me, is my tally-list of the votes received and counted by the judges, including," &c. It is not attempted to put that paper in evidence, so clearly unauthorized is such a tally-list of a clerk. Section 63 of the election laws of Pennsylvania, page 378 of Purdon's Digest, requires returns to be signed by all the judges present, and attested by the clerks.

This clerk testifies, "among votes counted were the following: One vote for W. H. Koontz, from Camp Cadwalader, Philadelphia, (paper A;) two votes for A. H. Coffroth, and six votes for W. H. Koontz, from independent company of Pennsylvania volunteers, at McConnellsburg, Pennsylvania, (papers B, C, and D;) one vote for W. H. Koontz, from company F, 210th regiment Pennsylvania volunteers, at Camp Squirrel Hill Pond, Virginia, (paper E.)" He speaks from his own tally-list, which does not appear in the record, and remarks: "the board were unanimous in agreeing to count the votes mentioned in papers A, B, C, D, E." Neither are these papers A, B, C, D, E, made a part of the evidence, although we find what purports to be such papers in Mis. Doc. No. 117.

The attempt is then made, by the sitting member, to exclude votes mentioned in papers so marked, purporting to be poll-books, returns, &c., from the military companies mentioned.

The witness Wolf does not swear these papers are copies of the papers before the return judges. We then look at these papers themselves. A is certified

to be "true copies of the poll-book, tally-paper, and return of the election as the same remains on file, May 3, 1866."

There is no certificate that the copy of certificate of oath of judges and clerks is a true copy, as on file. All certified to may be true, and yet the whole truth may not appear. There is no evidence that this or any of those papers are copies of the papers which were before the return judges. The presumption is that they are not. And as it is directly in point, we will cite, as authority, the report of this committee in the case of *Fuller vs. Dawson*, in which the following language is used:

"The prothonotary certifies that the transcript given on pages 68 and 69 of the second book is a correct copy of the poll-book, tally-list, and certificate of the return of the election, but makes no allusion to the certificates of oaths in the case. If these votes were in fact canvassed, and the only evidence upon which the canvass was made was such as is found in this transcript, it is clear that, under the rule adopted by the majority of the committee respecting the hospital returns in the case of *Koontz vs. Coffroth*, these votes ought not to have been counted, for the certificates of oaths are entirely wanting. But it is not shown affirmatively that this was the only evidence, and the transcript raises no such presumption, because the prothonotary's certificate does not exclude the idea that perfect certificates may have been on file in his office."

Papers B, C, D, and E are in like condition. We cannot, therefore, upon such evidence, or rather upon no evidence, deduct the votes of these camps and companies from the count of the contestant; when, too, no attempt is made by the sitting member to prove illegal votes or fraud in voting.

STUDENTS.

The sitting member claims that 13 votes should be deducted from the count of Mr. Koontz for non-resident students who voted at Gettysburg. An examination of testimony, pages 202, 203, 204, 205, and 213, will show that but one is proved to have voted for Mr. Koontz who did not consider Gettysburg his residence. But there is no evidence that the vote was counted, and the evidence is that only three of the thirteen voted for Mr. Koontz. Therefore no deduction is made.

BEDFORD COUNTY.

The sitting member claims that of the soldiers' returns, counted as he alleged, there should be deducted Koontz 63, and Coffroth 38. For proof that these returns were included in the count, O. E. Shannon's testimony is referred to, pages 24 and 25, who testified that the aggregate is 318 for Mr. Koontz and 94 for Mr. Coffroth, and that company H, 208th regiment Pennsylvania volunteers and barracks No. 1, were not counted. Then, in order to show that McClellan hospital, companies D, E, and F, 138th regiment; company C, 205th regiment; company C, 110th regiment; company I, 191st regiment, and depot field hospital were included in the count, he refers to testimony of said Shannon, the prothonotary, page 195, who swears that votes referred to in certain papers were counted by the return judges. But it will be perceived that the evidence produced as to the papers before the return judges is not legal or satisfactory.

While the votes referred to may have been all counted, there is no evidence that the papers produced were counted, or that other and perfect returns were not before the return judges. An inspection of the returns referred to by this prothonotary, page 195, will disclose the fact that a like attempt has been made for this county, to prove illegal returns that were made in Adams county. For example see No. 21, A, poll-book for McClellan hospital. The attempt is made to deduct 4 votes from the count of Mr. Koontz, because there is no return signed by the judges. Indeed there is likewise no certificate of oath; still it is all the prothonotary certifies it to be, or so may be a copy of a poll-book. But

there is no evidence that this was the paper before the return judges, or that they may not have had before them other and perfect papers.

Such is the case with every paper, with slight changes, on which the sitting member claims deductions in this county from the count in favor of Mr. Koontz.

This prothonotary testifies that returns "from Nos. 44 to 53 are certified copies of the returns sent to me by the secretary of the commonwealth, as shown by my certificate to the return judges." He produces as evidence a certified copy of a certificate which he had made to the return judges, which first certificate he made without authority of law. Instead of certified copies of returns, as required by section 18 of soldiers' law, he took upon himself to make a tabular statement (at least this is what is certified to the committee) with a certificate as to computation of votes for each candidate. The certificate to this computation produced to the committee reads: "I, O. E. Shannon, prothonotary of said county, (Bedford,) certify that the foregoing is a full and true copy of my certificate to the return judges of election for Bedford county, dated 28th October, 1864, and also of the tabular statement accompanying the same.

"Witness my hand and official seal, June 20, A. D. 1866.

"O. E. SHANNON, *Prothonotary*."

The sitting member says, "these votes are all counted;" but the presumption is that they were not counted upon such a paper, but that they were counted, if counted at all, upon proper and legally certified copies of returns.

Certified copies of returns before the judges should have been presented to the committee, and were not.

The statement of the sitting member in his brief, page 1, is erroneous, when he says: "This certificate of Mr. Shannon was received and recognized by the Committee of Elections as evidence at the hearing of the *prima facie* case (Koontz vs. Coffroth) being brought before the committee by the contestant."

The majority in their report distinctly rejected it, in the following language:

"Many papers have been referred to the committee which, on this hearing, are not evidence for any purpose.

"From the legal certificates and returns of the district and county boards of return judges in this case nothing appears in relation to the rejection of any soldiers' votes; and those who allege such rejection are compelled to look outside of these certificates and returns, and resort to papers and statements which are not legitimate evidence on this investigation, and which, without further proof, would few, if any of them, be evidence of themselves on the hearing of a contest on the merits."

And, unauthorized and illegal as this tabular statement is, there is no evidence that it was before the return judges.

It may also be properly remarked that the sitting member had notice, on the hearing in the *prima facie* case, that such papers were not admissible as evidence, and it is to be presumed that copies of the returns before the return judges would have been procured, could they have been made available for his purposes. As the votes of the nine soldiers named in brief of sitting member for "Bedford county" can only be deducted by a process of reasoning based upon papers totally unauthorized by law, it is useless to notice them further.

The committee can make no deductions from the vote in Bedford county. But before passing to the next county, it may be well to look briefly at the testimony to which sitting member refers the committee in his brief, in order to show that soldiers were at the polls in Southampton township for the purpose of "detering citizens from voting who wished to vote for Mr. Coffroth."

It is claimed that some twenty or thirty votes should be counted for sitting member because of such military interference. The sitting member is unfortunate in selecting the law to sustain this claim: Purdon's Digest, page 383, section 10, to wit: "No body of troops in the army of the United States or of

this commonwealth, shall be present, either armed or unarmed, at any place of election within this commonwealth, during the time of such election : *Provided*, That nothing herein contained shall be so construed as to prevent any officer or soldier from exercising the right of suffrage in the election district to which he may belong, if otherwise qualified according to law."

Nothing is to prevent any soldier from exercising the right of suffrage in his own district.

In this case the soldiers, six to ten, were in their own district ; at least there is nothing to show they were not, and there is no evidence or reason to presume that they were at the polls as an organized detachment. Their guns were stacked at a distance.

The testimony, also, is unfortunate for the sitting member, as it clearly shows that the "citizens" referred to were deserters, who were, and had been, avoiding the officers of the law, were avoiding their own homes and hiding in the mountains, continually startled at the sound of their own voices.

For most of them it is claimed they would have voted for Mr. Coffroth, because they "would have voted the democratic ticket."

It is unnecessary to refer further to the law.

A few quotations will be sufficient, from the testimony of sitting member. Page 184, Laban Johnson swears : "Soldiers said they were there for the purpose of taking any conscripts that came there to vote ; there was a right smart company of soldiers there, ten or a dozen ; all the conscripts were deprived from voting except one man, who voted a few minutes before the soldiers came ; the soldiers said if they had got there a few minutes sooner he would not have got away. Gideon Smith and others were not permitted to come in the yard that day. Gideon Smith (cross-examined) and others didn't offer to vote and didn't come in sight of the window that day, nor did any other conscript except the one that voted. The soldiers did not arrest anybody at the polls that day. I don't know that there were men deprived of their votes except from what they told me after the election. They said they saw the soldiers there, and knew that they would be taken up. They calculated they would be taken up. The politics of these men were democratic, and those that I saw said they were going to vote for Coffroth."

Isaac Jiams, on page 184, swears : "There was a company of conscripts about 200 yards from the window ; I don't know that they went any nearer to offer to vote. They could see the soldiers and they were afraid to go to vote. They had been told by different ones that if they went to vote, they would be picked up."

Richard M'Mullan, page 185, swears : "He had been drafted some time before ; he did not report ; the soldiers arrested him on Saturday before the election ; he left them ; they were at his house searching for him on morning of the election ; he understood there were soldiers at the polls to arrest all deserters ; he did not on that account go to the polls ; if he had gone he would have voted for A. H. Coffroth ; that he was six or seven miles from the polls and not at home on that day."

A. J. Reighard, page 186, swears : "He didn't come any nearer than eight or ten miles to the election house that day ; he was afraid of the soldiers because he had been drafted ; he would have voted the democratic ticket."

John Groman, page 186, swears the same in substance.

Adam H. Earnest, page 187, swears : "He was about ten miles from the polls ; didn't come nearer ; he would have come in, he guesses, if there had been no soldiers there ; he would have voted the democratic ticket."

Peter A. Miller, pages 188 and 189, swears : "I was across between the top and foot of the mountain, about six miles from the election ; I didn't go any nearer the polls ; I didn't offer my vote, because I was afraid to go there ; I was a conscript and hadn't reported ; I was drafted in 1863, in August, and had

managed to escape the officers all that time; I would have been apt to have voted for Coffroth, if I had gone, most assuredly; I am a democrat in politics."

Henry Stichler, page 189, swears: "I desired to vote. I was afraid that the fellows with the blue clothes on, the soldiers, would arrest me, and that was the reason I didn't vote. On the day of election I was about my father's house, shoe-making a little sneakingly. I was five miles off. I was drafted in June and was trying to keep out of the way; that was my game. The soldiers caught me at last. I would have voted for Coffroth."

John Oldham, page 189, swears: "Soldiers had been after me on the Sunday previous, but did not get me. If I had voted, I would have voted for Coffroth. I have always voted the democratic ticket, and always will."

The committee leave this point without further comment.

No vote should be deducted from the count of Mr. Koontz in this county.

SOMERSET COUNTY.

The sitting member claims deductions of votes from the count for the contestant. A like effort is made as in Adams and Bedford counties. Papers are introduced which are not legal evidence, and there is no proof that even they were before the return judges.

What purport to be certified copies of returns are introduced, which, from appearances, are garbled; here a return not signed by the judges; there no judges or return; here no judges sworn; there no certificate of oath. And yet they may be all they are certified to be, the prothonotary uniformly certifying, "a true and correct copy of the original," without the addition of such a word as return, or poll-book, or tally-list, or certificate of oath. One-half may have been omitted, and yet the prothonotary's certificate be true; and the committee repeat, there is no evidence to show that these were before the return judges. The only attempt at evidence that they were is made as follows, to wit: Herman L. Baer, a commissioner to take depositions, pages 146 and 147, says: "The following copies of record were produced before me by the counsel of A. H. Coffroth, esq.," and among others described is "a certified copy of the tally-paper of the clerks to the return judges for October election in 1864, as far as relates to Congress, as on file in the prothonotary's office, Somerset county, Pennsylvania." That tally-paper, pages 178 and 179, is referred to for proof that districts, companies, and camps therein named were counted, and then the committee are asked to infer that the incomplete papers already spoken of shall be regarded, without evidence, as the returns that were before the return judges.

That tally-paper, which is the foundation of the claim of the sitting member for the rejection of votes, is not a legal paper, because, first, (see Purdon's Digest, page 378, section 63,) it is required "the clerks shall make out a fair statement, &c., which shall be signed by said judges and attested by the clerks," and this appears as a certified copy signed alone by the clerks; and secondly, (see sections 63 and 64 of the same law, Purdon, page 378,) it would not be evidence even if signed by the judges and attested by the clerks, because it appears certified by a county prothonotary, when there is no authority for depositing any return or statement of a board of a county composing a part of a congressional district in the office of the prothonotary.

It is, therefore, clearly inadmissible; if possible, more objectionable than a similar paper introduced by the contestant in the case of Fuller *vs.* Dawson, because it was signed by one judge, the presiding judge. Yet it was rejected; and being in point, the committee insert, from the report in the case of Fuller *vs.* Dawson, the following:

"It is maintained that the return judges erroneously counted Mr. Dawson's vote three instead of two in the case of company E, one hundred and fifth regiment. It is true that he received only two of these votes, one of the three

having been cast for James H. Hopkins. But there is no proof that the three votes were counted for him except in the table on page 390 of the second book. That table purports to be a transcript of a paper signed, not by all nor by a majority of the return judges, but by 'James C. Clark, president of the meeting of return judges,' deposited in the office of the prothonotary of Westmoreland county, and by him certified.

"In section 63 of the general election law, (Purdon, page 378,) it is provided that when, as in the case before us, two or more counties compose a congressional district, 'the clerks shall make out a fair statement of all the votes' given in the county for the several candidates, 'which shall be signed by said judges and attested by the clerks, and one of the said judges shall take charge of such certificate, and shall produce the same at a meeting of one judge from each county,' at a place within the district designated by law, on the fourth Friday after the election.

"This paper, exhibited on page 390 of the second book, is inadmissible, because only signed by one of the judges; but it would not be evidence before the committee even if signed by all the county judges, for the reason that when a congressional district is composed of two or more counties there is no authority for depositing any return or statement of the county board in the office of the prothonotary."

Upon such papers the committee can make no deductions of votes. With same papers for a foundation, the committee are asked to deduct from Mr. Koontz 22 votes of voters who, it is claimed by sitting member, had not paid tax; and for proof, a clerk to county commissioners, Jacob Neff, pages 145, 146, and 148, produces a paper, "A," which he testifies "is the list I made out," to show that certain persons were not assessed.

While the persons may have voted "on age," if indeed they did vote, or if indeed their votes were counted, the committee reject such a paper by the argument of the sitting member himself, who offers it, and in doing so extract the following from his brief in this case. Claiming these deductions, he says: "Mr. Neff furnishes a list, and swears these names are not to be found on the assessments." Immediately following, in his brief, to destroy the testimony of a voter and witness, page 116, he says, "he paid soldier taxes to Isaac Simpson, treasurer. The treasurer keeps a record of all taxes received. This record could have been produced by the present treasurer, if the men in Mr Neff's list had paid their taxes." The committee agree that record testimony should be produced when it can be had; neither can they see why, if a treasurer's record should be produced, an assessor's should not.

This finishes Somerset county, and the committee make no deductions from former count.

FRANKLIN COUNTY.

As in Bedford county, the sitting member claims that certain soldiers' returns should be deducted, and the proof of the defects in the returns, as claimed, and of their having been counted by the return judges, is of the same character with that of Bedford county, and should be wholly rejected.

Nothing is, or has been, before the committee, to enable them to decide upon the legality of the returns that were before the return judges. It is impossible to say what were counted or before them.

Notwithstanding a county return judge, William D. Guthrie, page 238, and John R. Orr, an attorney-at-law, and a clerk to the county board, and George O. Seilhamer, deputy prothonotary, were all sworn, there is no evidence as to what returns were certified to and before the return judges and counted. Mr. Guthrie merely swears: "All returns of soldiers' vote presented us by the prothonotary were counted. I cannot identify the poll-books now presented."

All presented were counted, but no evidence is produced as to what were presented.

Mr. Orr swears, page 238: "Quite a number were presented; these were counted."

The deputy prothonotary swears, page 239: "There were sundry returns; all these returns were laid before the board."

The record testimony, the certified copies of the returns placed before the return judges, if any there were, should have been before the committee, and were not, and no cause is assigned for their absence.

The committee cannot therefore make any deductions from the count of this county.

FULTON COUNTY.

The like attempt is made in this county as in others, to cause deduction of votes, upon introduction of papers wholly inadmissible. It is useless to make the same argument again. (See pages 47 to 57, and especially 54.)

The conclusion to which the committee have arrived, is:

From majority of uncounted votes for Mr. Koontz, as shown by table last above named.....	159
Take the majority for Mr. Coffroth, as appears in the official count....	88
Leaves a majority for Mr. Koontz of.....	71
Should any doubt the correctness of counting the vote of companies B and G, 138th regiment Pennsylvania volunteers, where the two companies voted together, a deduction of Mr. Koontz's majority at that poll 32—1.....	31
Gives a majority for Mr. Koontz of.....	40

The committee therefore recommend the adoption of the following resolutions:

Resolved, That Alexander H. Coffroth is not entitled to a seat in this house, as a representative from the sixteenth (16th) district of Pennsylvania in the 39th Congress.

Resolved, That William H. Koontz is entitled to a seat in this house as a representative from the sixteenth district of Pennsylvania in the 39th Congress.

[From election law of Pennsylvania, Purdon's Digest, page 378.]

SEC. 63. When two or more counties shall compose a district for the choice of a member or members of the senate of this commonwealth, or of the House of Representatives of the United States, or of this commonwealth, the judges of the election in each county having met as aforesaid, the clerks shall make out a fair statement of all the votes which shall have been given at such election within the county, for every person voted for, as such member or members, which shall be signed by said judges, and attested by the clerks; and one of the said judges shall take charge of such certificate, and shall produce the same at a meeting of one judge from each county, at such place in such district as is or may be appointed by law for the purpose, which meeting shall be held on the seventh day after the election.

SEC. 64. The judges of the several counties having met as aforesaid, shall cast up the several county returns and make duplicate returns of all the votes given for such office in said district, and of the name of the person or persons elected, and one of said returns for each office shall be deposited in the office of the prothonotary of the court of common pleas of the county in which they shall meet, and the other shall be by said judges deposited in the nearest post-office, sealed and directed to the secretary of the commonwealth, in the manner directed in parts two and three of the eighteenth section of this act.

LAWS REGULATING ELECTIONS BY SOLDIERS IN MILITARY SERVICE.

Constitution of Pennsylvania, Artic'e III—of elections.

SECTION 1. In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the election district where he offers to vote ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector; but a citizen of the United States, who had previously been a qualified voter of this State, and removed therefrom and returned, and who shall have resided in the election district, and paid taxes as aforesaid, shall be entitled to vote after residing in the State six months: *Provided*, That white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the State one year, and in the election district ten days, as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

SECTION 2. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote *viva voce*.

SECTION 3. Electors shall in all cases, except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to or returning from them.

Amendment finally adopted in the year 1864.

SECTION 4. Whenever any of the qualified electors of this commonwealth shall be in any actual military service under a requisition from the President of the United States, or by the authority of this commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual place of election.

Act of assembly of August 25, 1864.

AN ACT to regulate elections by soldiers in actual military service.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That whenever any of the qualified electors of this commonwealth shall be in any actual military service, under a requisition from the President of the United States, or by the authority of this commonwealth, and as such absent from their place of residence on the days appointed by law for holding the general or presidential elections within this State, or on the days for holding special elections to fill vacancies, such electors shall be entitled at such times to exercise the right of suffrage as fully as if they were present at their usual places of elections, in the manner hereinafter prescribed, and whether, at the time of voting, such electors shall be within the limits of this State or not; and the right of voting shall not be affected, in any manner, by the fact of the voter having been credited to any other locality than the place of his actual residence by reason of the payment to him of local bounty by such other locality.

SECTION 2. A poll shall be opened in each company, composed, in whole or in part, of Pennsylvania soldiers, at the quarters of the captain, or other officer thereof, and all electors belonging to such company, who shall be within one mile of such quarters on the day of election, and not prevented by orders of their commanders, or proximity of the enemy, from returning to their company quarters, shall vote at such poll, and at no other place; officers, other than those of a company, and other voters detached and absent from their companies, or in any military or naval hospital, or in any vessel, or navy yard, may vote at such

other polls as may be most convenient for them ; and when there shall be ten or more voters at any place who shall be unable to attend any company poll or their proper place of election as aforesaid, the electors present may open a poll at such place as they may select and certify in the poll-book, which shall be a record of the proceedings at said election substantially in manner and form as hereinafter directed.

SECTION 3. The polls shall be opened as early as practicable on said day and remain open at least three hours, and if necessary, in the opinion of the judges of the election, in order to receive the votes of all the electors, they may keep the polls open until seven o'clock in the afternoon of said day ; proclamation thereof shall be made at or before the opening of the polls, and one hour before closing them.

SECTION 4. Before opening the poll, on the day of election, the electors present at each of the places aforesaid shall elect, *viva voce*, three persons present at the time, and having the qualifications of electors, for the judges of said election, and the judges so elected shall then appoint two of the persons present, who shall be qualified to act as clerks of said election ; and the judges shall prepare boxes, or other suitable receptacles, for the ballots.

SECTION 5. Before any votes shall be received, said judges and clerks shall each take an oath or affirmation that he will perform the duties of judge or clerk (as the case may be) of said election, according to law, and to the best of his abilities, and that he will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same, with oath or affirmation any of the said judges or clerks so elected or appointed may administer to each other ; and the same shall be in writing, or partly written and partly printed, and signed by said judges and clerks, and certified to by the party administering the same, and attached to or entered upon the poll-book, and there signed and certified as aforesaid.

SECTION 6. All elections shall be by ballot ; and the judges of elections may, and upon challenge of any voter shall, examine under oath or affirmation the applicant to vote, (which oath or affirmation any of said judges may administer,) in respect to his right to vote and his qualifications to vote in the particular ward, precinct, city, borough, township, or county of this State in which he claims residence ; and before receiving any vote the judges, or a majority of them, shall be satisfied that such applicant is a qualified voter of such place.

SECTION 7. Separate poll-books shall be kept and separate returns made for the voters of each city or county ; the poll-book shall name the company and regiment, and the place, post, or hospital in which such election is held ; the county and township, city, borough, ward, precinct, or election district of each voter shall be indorsed opposite his name on the poll-books ; each clerk shall keep one of said poll-books, so that there may be a double list of voters.

SECTION 8. Each ticket shall have written or printed, or partly written and partly printed thereon, the names of all the officers which may properly be voted for at said election for which the said elector desires to vote.

SECTION 9. That the judges to whom any ticket shall be delivered shall, upon the receipt thereof, pronounce with an audible voice the name of the elector ; and if no objection is made to him, and the judges are satisfied that said elector is a citizen of the United States and legally entitled, according to the constitution and laws of this State, to vote at said election, shall immediately put said ticket in the box, or other receptacle therefor, without inspecting the names of persons voted for ; and the clerks shall enter the name of the elector on the poll-book of his county, ward, precinct, city, borough, or township, and county of his residence, substantially, in pursuance of the form hereinafter given.

SECTION 10. At the close of the polls the number of voters shall be counted and set down at the foot of the list of voters and certified and signed by the judges and attested by the clerks.

SECTION 11. After the poll-books are signed, the ballot-box shall be opened and the tickets therein contained shall be taken out, one at a time, by one of the judges, who shall read distinctly, while the ticket remains in his hand, the name or names therein contained for the several officers voted for, and then deliver it to the second judge, who shall examine the same, and pass it to the third judge, who shall string the vote for each county upon a separate thread and carefully preserve the same; the same method shall be pursued as to each ticket taken out until all the votes are counted.

SECTION 12. Whenever two or more tickets shall be found deceitfully folded or rolled together, neither of such tickets shall be counted; and if a ticket shall contain more than the proper number of names for the same office, it shall be considered fraudulent as to all the names designated for that office, but no further.

SECTION 13. As a check in counting, each clerk shall keep a tally-list for each county from which votes shall have been received, which tally-list shall constitute a part of the poll-book.

SECTION 14. After the examination of the tickets shall be completed, the number of votes for each person in the county poll-books, as aforesaid, shall be enumerated, under the inspection of the judges, and set down as hereinafter provided, in the form of the poll-book.

SECTION 15. The following shall be substantially the form of the poll-books to be kept by the judges and clerks of the election, filling in the blanks carefully:

"Poll-book of the election held on the second Tuesday of October, one thousand eight hundred and _____, (or other election day, as the case may be,) by the qualified electors of _____ county, (or city,) State of Pennsylvania, in company _____, of the _____ regiment of Pennsylvania volunteers (or as the case may be,) held at (naming the place, post, or hospital.) A B, C D, and E F being duly elected as judges of said election, and J K and L M being duly appointed as clerks of said election, were severally sworn or affirmed, as per certificates herewith returned.

"Number and names of the electors voting, and their county, city, borough, township, ward, or precinct, of residence:

"No. 1, A B, _____ county of _____, township of _____.

"No. 2, C D, _____ county of _____, township of _____.

"It is hereby certified that the number of electors for _____ county, Pennsylvania, voting at this election, amounts to _____.

"A B,

"C D,

"E F,

Judges of Election.

"Attest:

"J K,

"L M, *Clerks.*"

FORM OF CERTIFICATE OF OATH OF JUDGES AND CLERKS.

"We, A B, C D, and E F, judges of this election, and J K and L M, clerks thereof, do each severally swear (or affirm) that we will duly perform the duties of judges and clerks of said election, severally acting as above set forth, according to law and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse in conducting the same.

"A B,

"C D,

"E F, *Judges.*

"J K,

"L M, *Clerks.*

"I hereby certify that C D, E F, judges, and J K and L M, clerks, were, before proceeding to take any votes at said election, first duly sworn, or affirmed, as aforesaid. Witness my hand, this day of , anno Domini one thousand eight hundred and .

"A B, *Judge of Election.*

"I certify that A B, judge aforesaid, was also so sworn (or affirmed) by me. Witness my hand the date before written.

"J K, *Clerk of Election.*"

SECTION 16. A return, in writing, shall be made in each poll-book setting forth, in words at length, the whole number of ballots cast for each office, (except ballots rejected,) the name of each person voted for, and the number of votes given to each person, for each different office; which return shall be certified as correct, signed by the judges, and attested by the clerks; such return shall be substantially as follows:

"At an election held by the electors of company , of the regiment of Pennsylvania soldiers, at (naming the place where the election is held) there were (naming the number in words, at length) votes cast for the office of governor, of which A B had votes, C D had votes. For senator, votes were cast; of which E F had votes, G H had votes. For representatives, votes were cast; of which J K had votes, L M had votes." And in the same manner as to any other officers voted for.

At the end of the return, the judges shall certify, in substance, as follows, giving, if officers, their rank and number of their regiment; if privates, the number of their regiment and company, viz:

"A return of the election, held as aforesaid, on the day of , anno Domini one thousand eight hundred and .

"A B, captain company A, one hundred and thirty-first regiment Pennsylvania volunteers.

"C D, company A, one hundred and thirty-first regiment Pennsylvania volunteers.

"E F, company A, one hundred and thirty-first regiment Pennsylvania volunteers.

"Attest:

— — —, *Judge of Election.*

"J K,

"L M, *Clerks.*"

SECTION 17. After canvassing the votes, in manner aforesaid, the judges shall put in an envelope one of the poll-books, with its tally-list, and return of each city or county, together with the tickets, and transmit the same, properly sealed up and directed, through the nearest post office, or by express, as soon as possible thereafter, to the prothonotary of the court of common pleas of the city, or county, in which such electors would have voted if not in the military service aforesaid, (being the city or county for which the poll-book was kept,) and the other poll-book, of said city or county, enclosed in an envelope, and sealed as aforesaid, and properly directed, shall be delivered to one of the commissioners hereinafter provided for, if such commissioner calls for the same in ten days, and if not so called for the same shall be transmitted by mail, or by express, as soon as possible thereafter, to the secretary of the Commonwealth, who shall carefully preserve the same, and on demand of the proper prothonotary deliver to said prothonotary, under his hand and official seal, a certified copy of the return of votes so transmitted to and received by him, for said city, or county, of which the demandant is prothonotary.

SECTION 18. It shall be the duty of the prothonotary of the county, to

whom such returns shall be made, to deliver to the return judges of the same county a copy, certified under his hand and seal, of the return of votes so transmitted to him by the judges of the election, as aforesaid, or as officially certified by the secretary of the Commonwealth as aforesaid to said prothonotary.

SECTION 19. The return judges of the several counties shall adjourn to meet at the places now directed by law, on the third Friday after any general or presidential election, for the purpose of counting the soldiers' vote; and when two or more counties are connected in the election, the meeting of the judges, from each county, shall be postponed, in such case, until the Friday following.

SECTION 20. The return judges, so met, shall include in their enumeration the votes so returned, and thereupon shall proceed, in all respects, in the like manner as is provided by law in cases where all the votes shall have been given at the usual place of election: *Provided*, That the several courts of this Commonwealth shall have the same power and authority to investigate and determine all questions of fraud or illegality, in relation to the voting of the soldiers, as are now vested in said courts with regard to questions of fraud and illegality arising from the voting of persons not in military service, under the present laws relating thereto.

SECTION 21. In elections for electors of President and Vice-President of the United States, it shall be the duty of the secretary of the Commonwealth to lay before the governor all returns received by him from any election as aforesaid, who shall compare the same with the county returns, and add thereto all such returns as shall appear, on such comparison, not to be contained in said county returns, in every case where said military returns for such counties shall have been received by said secretary at a period too late for transmitting them to the proper prothonotary in time for the action of the judges of the said counties.

SECTION 22. All said elections shall be subject to contest in the same manner as is now provided by law; and in all cases of contested elections, all legal returns which shall have been *bona fide* forwarded by said judges in the manner hereinbefore prescribed shall be counted and estimated, although the same may not have arrived or been received by the proper officers to be counted and estimated in the manner hereinbefore directed before issuing the certificates of election to the persons appearing to have a majority of the votes then received, and the said returns shall be subject to all such objections as other returns are liable to when received in due time.

SECTION 23. It shall be the duty of the secretary of the Commonwealth to cause to be printed a sufficient number of copies of this act, with such extracts from the general election law as shall be deemed important to accompany the same, and blank forms of poll-books, with tally-lists and returns, as prescribed in this act, which, with the necessary postage stamps to defray expenses and postage on returns, shall, in sufficient time, before any such election, be forwarded by said secretary, at the expense of the Commonwealth, by commissioners, or otherwise, as shall be deemed most certain to insure delivery thereof to the captain or commanding officer of each company, or, in case of detached voters, to the officer having charge of the post or hospital, who shall retain the same until the day of election, and then deliver the same to the judges elected, as provided in this act: *Provided*, That no election shall be invalidated by reason of the neglect or failure of the said secretary to cause the delivery of said poll-books to the proper persons as aforesaid.

SECTION 24. That for the purpose of more effectually carrying out the provisions of this act, the governor shall have power to appoint and commission, under the great seal of the Commonwealth, such number of commissioners having the qualifications of an elector in this State as he shall deem necessary, not exceeding one to each regiment of Pennsylvania soldiers in the service of this State or of the United States, and shall apportion the work among the commis-

sioners, and supply such vacancies as may occur in their number. Such commissioners, before they act, shall take and subscribe an oath or affirmation and cause the same to be filed with the secretary of the Commonwealth, to the following: "I, ———, appointed commissioner under the act to regulate elections by soldiers in military service, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Commonwealth of Pennsylvania, and impartially, fully, and without reference to political preferences or results, perform, to the best of my knowledge and ability, the duties imposed on me by the said act; and that I will studiously endeavor to prevent fraud, deceit, and abuse, not only in the elections to be held under the same, but in the returns thereof." And if any commissioner appointed by or under this act shall knowingly violate his duty, or knowingly omit or fail to do his duty under this act, or violate any part of his oath or affirmation, he shall be liable to indictment for perjury in the proper county, and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or imprisonment in the penitentiary, at labor, not exceeding one year, or both, in the discretion of the court.

SECTION 25. It shall be the duty of such commissioners to deliver, as far as practicable, at least four of the copies of this act, and other extracts of laws published as hereinbefore directed, and at least two blank forms of poll-books, tally-lists, and returns intrusted to them, as mentioned in the twenty-third section of this act, to the commanding officers of every company or part of company of Pennsylvania soldiers in the actual military or naval service of the United States, or of this State, and to make suitable arrangements and provision for the opening of polls under this act; it shall also be the duty of said commissioners, as soon as practicable after the day of election, to call upon the judges of the election and procure one poll-book containing the returns of the election, and safely to preserve the same, not only from loss, but from alteration, and deliver the same, without delay, to the secretary of the Commonwealth.

SECTION 26. Said commissioners shall receive, in full compensation for their services under this act, ten cents per mile in going to and returning from their respective regiments, estimating the distance of travel by the usually travelled route; and it is hereby made the duty of the auditor general and State treasurer to audit and pay the accounts therefor in the same manner as other claims are now audited and paid by law. All commanding and other officers are requested to aid the commissioners herein appointed, and to give them all proper facilities to enable them to carry out the design and intention of this act.

SECTION 27. No mere informality in the manner of carrying out or executing any of the provisions of this act shall invalidate any election held under the same, or authorize the return thereof to be rejected or set aside; nor shall any failure on the part of the commissioners to reach or visit any regiment or company, or part of company, or the failure of any company or part of company to vote, invalidate any election which may be held under this act.

SECTION 28. The several officers authorized to conduct such election shall have the like powers, and they, as well as other persons who may attend, vote, or offer to vote at such election, shall be subject to the like penalties and restrictions as are declared or provided in the case of elections by the citizens at their usual places of election; and all of the provisions of the general election laws of this State, so far as applicable, and not inconsistent with the provisions of this act, nor supplied thereby, shall apply to all elections held under this act.

SECTION 29. No compensation shall be allowed to any judge or clerk under this act.

SECTION 30. When the sheriff of any city or county shall issue his proclamation for an election for a presidential, congressional, district, city, county, or State election under the laws of this State, he shall transmit, immediately, copies thereof to the field officers and senior captains in the service aforesaid from said city or county.

SECTION 31. The sum of fifteen thousand dollars, or so much thereof as may be necessary, is hereby appropriated from the general revenue, to be paid upon the order of the secretary of the Commonwealth, to carry this law into effect.

SECTION 32. When any of the electors mentioned in the first section of this act, less than ten in number, shall be members of companies of another State or Territory, or for any sufficient and legal cause shall be separated from their proper company, or shall be in any hospital, navy yard, vessel, or on recruiting, provost, or other duty, whether within or without this State, under such circumstances as shall render it probable that he or they will be unable to rejoin their proper company, or to be present at his proper place of election, on or before the day of the elections therein mentioned, said elector or electors shall have a right to vote in the following manner:

SECTION 33. The voter aforesaid is hereby authorized, before the day of election, to deposit his ballot or ballots, properly folded, as required by the general election laws of this State, or otherwise as the voter may choose, in a sealed envelope, together with a written or printed, or partly written and partly printed, statement, containing the name of the voter, the county, township, borough, or ward of which he is a resident, and a written or printed authority to some qualified voter in the election district of which said voter is a resident to cast the ballots contained in said envelope for him on the day of said election. Said statement and authority to be signed by the said voter, and attested by the commanding or some commissioned officer of the company of which he is a member in the case of a private, and of some commissioned officer of the regiment in the case of an officer, if any of such officers are conveniently accessible, and if otherwise, then by some other witness; and there shall also accompany said ballots an affidavit of said voter, taken before some one of the officers aforesaid, and in the absence of such officers, before some other person duly authorized to administer oaths by any law of this State, that he is a qualified voter in the election district in which he proposes to vote; that he is in the actual military service of the United States or of this State, describing the organization to which he belongs; that he has not sent his ballots to any other person or persons than the one in such authority mentioned; that he will not offer to vote at any poll which may be opened on said election day, at any place whatsoever, and that he is not a deserter, and has not been dishonorably dismissed from the service, and that he is now stationed at _____, in the State of _____. Said sealed envelope, containing the ballots, statement, authority and affidavit as aforesaid, to be sent to the proper person, by mail or otherwise, having written or printed on the outside, across the sealed part thereof, the words, "Soldier's ballot for _____ township, (borough or ward,) in the county of _____."

SECTION 34. The elector to whom such ballot shall be sent shall, on the day of election, and whilst the polls of the proper district are open, deliver the envelope so received, unopened, to the proper election officer, who shall open the same in the presence of the election board, and deposit the ballots therein contained, together with the envelope and accompanying papers, as other ballots are deposited, and said board shall count and canvass the same in the same manner as other votes cast at said election; and the person delivering the same may, on the demand of any elector, be compelled to testify, on oath, that the envelope, so delivered by him, is in the same state as when received by him, and that the same has not been opened, or the contents thereof changed or altered in any way by him or any other person.

SECTION 35. The right of any person thus offering to vote at any such election may be challenged, for the same causes that it could be challenged if he were personally present, and for no other reason or cause.

SECTION 36. Any officer of any general or special election in this State who shall refuse to receive any such envelope and deposit such ballots, or to count

and canvass the same, and any elector who shall receive such envelope, and neglect or refuse to present the same to the officers of the election district, indorsed on the said envelope, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the State prison not exceeding one year, and by fine not exceeding five hundred dollars, or either, or both, in the discretion of the court.

SECTION 37. Any person who shall wilfully and corruptly make and subscribe any false affidavit, or make any false oath, touching any matter or thing provided in this act, shall be deemed guilty of wilful and corrupt perjury, and upon conviction thereof shall be punished by imprisonment in the State penitentiary not exceeding five years, and by fine not exceeding one thousand dollars, or by either, or both, in the discretion of the court.

SECTION 38. That it shall be the duty of the secretary of the Commonwealth to prepare the necessary blank forms to carry out the provisions of this act, and to furnish the same for the use of the persons so engaged in the military service aforesaid.

SECTION 39. In case any qualified elector, in military service aforesaid, may be in any hospital, military or naval, or in any vessel or navy yard, the statements and affidavits in this act mentioned may be witnessed by and made before any officer of the vessel, navy yard, or other place, in which said voter is, for the time being, engaged.

SECTION 40. It shall be the duty of every assessor within this Commonwealth, annually, to assess and return, in the manner now required by law, a county tax of ten cents upon each and every non-commissioned officer and private, and the usual taxes upon every commissioned officer, known by them to be in the military service of the United States, or of this State, in the army; and when any omission shall occur, the omitted names shall be added by such assessors to the assessments and lists of voters, on the application of any citizen of the election district or precinct wherein such soldier might or would have a right to vote if not in such service, as aforesaid, and such non-commissioned officers and privates shall be exempt from all other personal taxes during their continuance in such service; and said assessors shall, in each and every case of such assessed soldiers or officers, without fee or reward therefor, give a certificate of such regular or additional assessment to any citizen of the election district or precinct who may at any time demand the same; and upon the presentation thereof to the tax collector of said district or the treasurer of the said county, it shall be the duty of such officer to receive said assessed tax of and from any person offering to pay the same for the soldier or officer therein named, and to indorse upon such certificate a receipt therefor; and it shall also be the duty of said collector or county treasurer to receive said assessed tax from any person who may offer to pay the same for any of said officers or soldiers, without requiring a certificate of assessment, when the name of such persons shall have been duly entered upon the assessment books and tax duplicates, and give a receipt therefor to such persons, specially stating therein the name of the soldier or officer whose tax is thus paid, the year for which it was assessed, and the date of the payment thereof; which said certificate and receipt, or receipt only, shall be *prima facie* evidence to any election board provided for by this act, before which the same may be offered, of the due assessment of said tax against, and the payment thereof, by the soldier or officer therein named offering the same, as aforesaid, but said election board shall not be thereby precluded from requiring other proof of the right to vote, as specified by this act, or the general election laws of this Commonwealth; and if any of said assessors, collectors, or treasurers, shall neglect or refuse to comply with the provisions of this section, or to perform any of the duties therein enjoined upon them, or either of them, he or they so offending shall be considered and adjudged guilty of a misdemeanor in office, and shall, on conviction, be fined in any sum not less than twenty nor

more than two hundred dollars: *Provided*, That the additional assessments required to be made by the above section in the city of Philadelphia shall be made on application of any citizen of the election district or precinct thereof, upon oath or affirmation of such citizen, to be administered by the assessor, that such absent soldier is a citizen of the election district or precinct wherein such assessment is required by such citizen to be made.

SECTION 41. This act shall not apply to the election of members of council, or to ward and division officers, in the city of Philadelphia.

Act of April 16, 1838. Pamph. Laws, p. 593.

AN ACT regulating election districts.

SECTION 37. That no inspector, judge, or other officer of any election shall be eligible to any office at such election, nor shall any person holding an office under the general or State government be an inspector, judge, or other officer of any such election, nor shall any person holding an office under the government of the United States be allowed to serve as member of city councils, commissioner of a district, or burgess.

Act of July 2, 1839. Pamph. Laws, p. 519.

AN ACT relating to the elections of this Commonwealth.

SECTION 63. No person shall be permitted to vote at any election, as aforesaid, other than a white freeman of the age of twenty-one years, or more, who shall have resided in this State at least one year, and in the election district where he offers to vote at least ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election. But a citizen of the United States, who had previously been a qualified voter of this State, and removed therefrom and returned and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in this State six months: *Provided*, That the white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in this State one year, and in the election district ten days as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

SECTION 64. Every person claiming a right to vote at any election as aforesaid shall, if required by either of the inspectors, make proof—

1. That he is a natural born citizen of this Commonwealth; or,
2. That he was settled therein on the twenty-eighth of September, one thousand seven hundred and seventy-six, and has since continued to reside therein; or,
3. That having been a foreigner, who since that time came to settle therein, he took an oath or affirmation of allegiance to the same on or before the twenty-sixth of March, anno Domini one thousand seven hundred and ninety, agreeably to the then existing constitution and laws, and, as evidence of any of the said facts, the oath or affirmation of such person shall be sufficient; or,
4. That he is a natural born citizen of some other of the United States, or had been lawfully admitted or recognized as a citizen thereof on or before the twenty-sixth day of March, one thousand seven hundred and ninety, and as evidence thereof he shall, if required by any judge or inspector of the election, produce a certificate in due form from some judge, prothonotary, or clerk of a court, mayor, alderman, or justice of the peace, or shall be examined on his oath or affirmation; or,
5. That having been an alien, he has been naturalized conformably to the laws of the United States, and, as the only evidence thereof, he shall produce

a certificate thereof, under the seal of the court where such naturalization took place, except where such person shall have resided in said ward, district, or township for ten years or upwards next preceding such application to vote, in which case the oath of such applicant shall be *prima facie* evidence of naturalization.

SECTION 66. In all cases where the name of the person claiming to vote is not found on the list furnished by the commissioners and assessor, or his right to vote, whether found thereon or not, is objected to by any qualified citizen, it shall be the duty of the inspectors to examine such person on oath as to his qualifications, and if he claims to have resided within the State for one year or more his oath shall be sufficient proof thereof; but he shall make proof by at least one competent witness, who shall be a qualified elector, that he has resided within the district for more than ten days next immediately preceding said election, and shall also himself swear that his *bona fide* residence, in pursuance of his lawful calling, is within the district, and that he did not remove into said district for the purpose of voting therein.

SECTION 67. Every person qualified as aforesaid, and who shall make due proof, if required, of his residence and payment of taxes as aforesaid, shall be admitted to vote in the township, ward, or district in which he shall reside.

SECTION 102. If any inspector, judge, or clerk, as aforesaid, shall be convicted of any wilful fraud in the discharge of his duties as aforesaid, he shall undergo an imprisonment for any term not less than three nor more than twelve months, and be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and shall be for seven years thereafter disabled from holding any office of honor, trust, or profit in this Commonwealth, and shall moreover be disabled for the term aforesaid from giving his vote at any general or special election within this Commonwealth.

SECTION 103. If any inspector or judge of an election shall knowingly reject the vote of any qualified citizen, or knowingly receive the vote of any person not qualified, or conceal from his fellow-officers any fact on the knowledge of which such vote should by law be received or rejected, each of the persons so offending shall, on conviction, be punished in the manner prescribed in the one hundred and seventh section of this act.

SECTION 105. If any judge of an election, inspector, clerk, or other person, before the poll shall be closed, shall unfold, open, or pry into any ticket, with a design to discover the name of any candidate therein, every person so offending shall, on conviction, be fined in any sum not less than fifty nor more than one hundred dollars, and imprisoned for any time not less than one nor more than three months.

SECTION 106. If any person shall embezzle or unlawfully deface, alter, change, substitute, or destroy any ticket, list of voters, tally-paper, or certificate, taken or made at any election as aforesaid, he shall, on conviction, suffer imprisonment for a term not less than twelve months nor more than three years, at the discretion of the court, and be fined in any sum not less than one hundred nor more than one thousand dollars.

SECTION 110. If any person shall prevent or attempt to prevent any officers of an election under this act from holding such election, or use or threaten any violence to any such officer, or shall interrupt or improperly interfere with him in the execution of his duty, or shall block up or attempt to block up the window or avenue to any window where the same may be holden, or shall riotously disturb the peace at such election, or shall use or practice any intimidation, threats, force, or violence, with design to influence unduly or overawe any elector, or to prevent him from voting, or to restrain the freedom of choice, such person, on conviction, shall be fined in any sum not exceeding five hundred dollars, and be imprisoned for any time not less than one nor than twelve months.

SECTION 115. If any person or persons shall make any bet or wager upon

the result of any election within this Commonwealth, or shall offer to make any such bet or wager, either by verbal proclamation thereof, or, by any written or printed advertisement, challenge or invite any person or persons to make such bet or wager, upon conviction thereof he or they shall forfeit and pay three times the amount so bet or offered to be bet.

SECTION 116. It shall be the duty of every judge, sheriff, mayor, alderman, justice of the peace, or constable knowing of any person having offended against the provisions of the one hundred and fifteenth section of this act, to commence proceedings against the persons so offending; and it shall be the duty of the grand juries of the respective counties within this Commonwealth to make a presentment of all such offences coming within their knowledge.

SECTION 117. It shall be the duty of the inspectors and judge of the election to reject the votes of all persons who they or any of them shall know, or who shall be proven before them to have made, or who are in any manner interested in any bet or wager on the result of said election, and on the request of any qualified elector said inspectors and judge shall receive proof to show the person so offering to vote has or has not made any such bet or wager, or is or is not interested therein.

SECTION 118. It shall be the duty of the several constituted authorities having care and charge of the poor in the respective counties, districts, and townships of this Commonwealth, knowing, or being informed under oath, of any person or persons having made any bet or wager of any land, goods, money, or thing of value, on the result of any election within this Commonwealth, or deposited the same in the hands of any person within their respective counties, districts, or townships, to bring suit in the name of the Commonwealth of Pennsylvania, for the use of the poor of such county, district, or township, against such deposittee or stakeholder, where said bet is deposited in the hands of a third person, or against the party winning said bet, when the same is not so deposited, for the recovery of the amount so bet; and if on the trial it shall be made appear the said lands, goods, money, or thing of value, was bet on the result of any election within this Commonwealth, said guardians, directors, or overseers of the poor shall be entitled to recover the amount or value thereof, for the use of the poor, from said stakeholder, or person winning said bet where there is no stakeholder:

Provided, Said suit is brought within two years from the time of making said bet. And the stakeholder is hereby prohibited, during said time, to pay over the amount so bet to either of the parties, and shall be liable for the same, whether such bet is paid over or delivered to the parties, or either of them, or not, and the party winning shall in like manner be liable to the payment of the whole amount so bet, where the same is received by him. And said bet, or the value thereof, may be recovered as debts of like amount are by law recoverable; and if said guardians, directors, or overseers of the poor shall neglect or refuse to bring such suit, they shall be guilty of a misdemeanor in office, and, on conviction, shall be fined in any sum not less than the amount so bet, nor more than double the amount.

SECTION 119. If any person, not by law qualified, shall fraudulently vote at any election within this Commonwealth, or being otherwise qualified shall vote out of his proper district, or if any person, knowing the want of such qualification, shall aid or procure such person to vote, the person or persons so offending shall, on conviction, be fined in any sum not exceeding two hundred dollars, and be imprisoned for any term not exceeding three months.

SECTION 120. If any person shall vote at more than one election district, or otherwise fraudulently vote more than once on the same day, or shall fraudulently fold and deliver to the inspector two tickets together, with the intent to illegally vote, or shall vote the same, or if any person shall advise and procure another so to do, he or they, so offending, shall, on conviction, be fined in any sum not

less than fifty nor more than five hundred dollars, and be imprisoned for any term not less than three nor more than twelve months.

SECTION 121. If any person not qualified to vote in this Commonwealth agreeably to law, (except the sons of qualified citizens,) shall appear at any place of election for the purpose of issuing tickets, or of influencing the citizens qualified to vote, he shall, on conviction, forfeit and pay any sum not exceeding one hundred dollars for every such offence, and be imprisoned for any term not exceeding three months.

SECTION 122. If any elector shall receive any gift or reward for his vote, in meat, drink, money, or otherwise, he shall forfeit his right to vote at that election, and shall, on conviction, be fined in any sum not exceeding one hundred dollars, and suffer imprisonment for a term not less than one nor more than six months.

SECTION 123. If any person shall give or bestow any such gift or reward in order to procure any person to be elected, or shall promise or attempt, either directly or indirectly, to confer any such gift or reward for such purpose, or shall attempt or endeavor to influence any voter by any offer or promise of any appointment, employment, or pecuniary benefit, or by threats of loss of any appointment, employment or pecuniary benefit, he shall, on conviction, be fined in a sum not less than one hundred dollars, nor exceeding one thousand dollars, and suffer imprisonment not less than one nor more than twelve months.

SECTION 124. If any person shall wilfully and corruptly make or procure any person to make falsely any oath or affirmation required or authorized by this act, such person shall suffer such penalties and disabilities as are incurred on conviction of wilful and corrupt perjury, or subornation of perjury.

SECTION 125. If any person shall knowingly publish, utter, or make use of any forged or false receipt, or certificate, with intent to impose the same upon or deceive any inspector or judge at any election, as aforesaid, such person shall, on conviction, be fined in any sum not less than fifty nor more than five hundred dollars, and suffer imprisonment not less than six months nor more than two years.

Act of June 13, 1840. Pamph. Laws, p. 683.

SECTION 14. Every inspector and judge of an election shall have full power and authority to administer oaths or affirmations to any and all persons requiring or offering to be sworn or affirmed, in relation to the right of any person to vote at any election authorized to be held under any law of this Commonwealth, and generally shall, in the exercise of the duties of their office as inspectors or judges, have the same power to administer oaths or affirmations required or authorized to be administered by the provisions of this act, or the act to which this is a supplement, as justices of the peace have by the laws of this Commonwealth, and a violation of such oath or affirmation shall be subject to the same fines and penalties which are or may be inflicted by law for a violation of such oath or affirmation when administered by a justice of the peace.

Act of April 11, 1848. Pamph. Laws, p. 512.

SECTION 1. That the election for electors of President and Vice President of the United States shall, in the year one thousand eight hundred and forty-eight, and every fourth year thereafter, be held on the Tuesday next after the first Monday of November.

HON. ROSCOE CONKLING AND PROVOST MARSHAL GEN. FRY

JULY 14, 1866.—Ordered to be printed.

Mr. SHELLABARGER, from the Select Committee to investigate this case, made the following

REPORT.

The Select Committee, appointed April 30, 1866, to investigate the statements and charges made by Hon. Roscoe Conkling, in his place, against Provost Marshal General Fry and his bureau—whether any frauds have been perpetrated in his office in connexion with the recruiting service; also to examine into the statements made by General Fry in his communication to Hon. Mr. Blaine, read in the House, having completed their labors as to one branch of their investigation, submit the following report:

When your committee was about to enter upon the performance of the duties enjoined upon it by the orders of the House, it became apparent that a full investigation of all matters embraced within the scope of its authority could not be completed during the present session of Congress. In view of the time, labor, and public expense necessarily involved in the performance of the work, your committee had under consideration the propriety of making a preliminary report to the House, setting forth the magnitude of the task assigned to it, and asking for further instructions in the premises. But in consideration of the fact that the character of a member of the House of Representatives had been publicly assailed with serious charges in a letter emanating from the head of an important bureau of the government, addressed to another member of the House of Representatives and by him caused to be read to the House, and thus made a part of the published and permanent record of its proceedings, we deemed that it was the privilege of the member thus gravely charged, and due also to the House itself, that your committee should proceed without delay to the investigation of at least that branch of the case which relates to the charges preferred by Provost Marshal General Fry against the Hon. Roscoe Conkling. Your committee did this the more readily, as the member thus charged pleaded and insisted upon his privilege to have an early investigation of that branch of the case, and no objection was interposed by any party to its separate consideration and prompt decision, leaving the remaining branch of the investigation relating to the conduct of the bureau of the Provost Marshal General to the future action of the committee.

Your committee, therefore, as will appear in the journal of its proceedings, have thus far confined their investigation to the charges against Mr. Conkling contained in the letter of General Fry to Mr. Blaine, and excluded all testimony bearing upon the conduct of General Fry as Provost Marshal General, except so far as that was deemed necessary to a full investigation of the charges against Mr. Conkling. The testimony touching the Hoboken credits and the disposal of the \$54,000 bounty money arising therefrom was admitted to show, as was alleged, a settled purpose on the part of General Fry to injure Mr. Conkling,

dating back long anterior to the Blaine letter, and evinced by his alleged attempt to procure by a corrupt bargain testimony to be used against Mr. Conkling in relation to certain alleged frauds in the Utica district of the State of New York. Your committee deemed it a legitimate subject of inquiry to investigate to that extent the motive of General Fry, and its connexion, if any, with the animus which prompted the letter to Mr. Blaine. Both parties were, therefore, allowed full opportunity to introduce testimony relating to that point.

The first statement of the letter of General Fry to be investigated under the rule adopted by the committee is as follows :

“In the summer of 1863 Mr. Conkling made a case for himself by telegraphing to the War Department that the provost marshal of his district required legal advice, which he was hereupon empowered to give.”

The committee understand this charge to be, that Mr. Conkling secured his own employment professionally, by the department, by telegraphing that the provost marshal of his district required legal advice, and that his motive and object in transmitting the despatch was to secure such employment. Unless this is the meaning of the words of the letter, there is no significance at all to be attached to them, in the connexion in which they are used. The evidence shows that, in the latter part of July, 1863, a man named Hobson was arrested in the 21st district of New York as a deserter. A writ of *habeas corpus* was issued by Judge Bacon, justice of the supreme court, and placed in the hands of the sheriff of Oneida county. A return was made by the officer having the deserter in custody, which return showed that the man was held by the military authorities as a deserter from the military service of the United States. This return was adjudged insufficient by the judge who issued the writ, and a writ of attachment was ordered and issued against the officer for declining to bring the deserter before the judge, in obedience to the writ of *habeas corpus*. A direct conflict had arisen between the military authorities of the United States and the authorities of the State of New York, in reference to which very great excitement had arisen among the people of the district. The district attorney was absent. Mr. Kernan, the representative from that district, had been engaged as counsel against the government, and the danger of a collision between the national and State authorities was immediate and palpable. In the emergency, and acting at the request and upon advice of eminent citizens of the district, Mr. Conkling sent to the Secretary of War the following despatch :

“In the absence of all of us who could aid him professionally, the provost marshal here was served with a *habeas corpus* to produce a deserter; he obeyed the order not to produce, and so returned. The judge held this insufficient, and issued attachment. He telegraphed the district attorney and his assistant. They are absent and engaged. What shall we do?

“R. CONKLING.”

It will be observed that the despatch does not inform the Secretary of War that the provost marshal required legal advice, but was a succinct statement of the actual state of facts, and a request that the Secretary should direct what should be done in an emergency which excited the apprehensions of the friends of the government. In the opinion of the committee, Mr. Conkling did only what he was fully justified in doing in this matter, and there is no evidence tending, however remotely, to show that in sending the despatch he was influenced by any merely personal motive.

The second statement of General Fry's letter which has claimed the attention of the committee is as follows :

“In April, 1865, Mr. Charles A. Dana, then Assistant Secretary of War, without notifying me, had Mr. Conkling appointed to investigate all frauds in enlistments in western New York, with the stipulation that he should be com-

missioned judge advocate for the prosecution of any cases brought to trial, and he was appointed to prosecute before a general court-martial Major J. A. Had-dock.

"Mr. Dana vested him, by several orders issued in the name of the Secretary of War, without the sanction of Mr. Stanton, with the most extraordinary powers. Among these was the right to examine the despatches in all the telegraph offices in the western division of New York, which enabled a violation of the sanctity of personal and business correspondence."

In another part of the letter Mr. Dana is spoken of as the friend of Mr. Conkling; and the committee understand the imputation of this portion of the letter to be, that Mr. Dana, of his own motion, without notice to General Fry, and without the sanction of the Secretary of War, and by some management or understanding between Mr. Dana and Mr. Conkling, appointed Mr. Conkling to investigate frauds in enlistments in western New York, and vested him with extraordinary powers.

It has been proved before the committee by the testimony of the Secretary of War that about the 30th of March, 1865, the Secretary of War directed Mr. Dana to telegraph to Mr. Conkling to come to Washington, to consult with the Secretary in relation to certain frauds in western New York, in regard to which a report had been made by Major Luddington, an inspecting officer, who had been sent to New York for the purpose of investigation. The Secretary of War testifies that he had himself determined that Mr. Conkling should take charge of the investigation of those frauds, if he would do so, and for that purpose directed the despatch to be sent to Mr. Conkling requesting him to come to Washington. On the 2d of April Mr. Conkling came to Washington, and had an interview with the Secretary of War, who then urged him to take charge of the investigation referred to, stating, at the same time, that "he considered a diligent and rigorous investigation as absolutely necessary to the safety of the country; that we were at that time engaged in the midst of a draft; General Grant had commenced his movements; and that everything depended upon keeping the army up, and the means of keeping the army up was the diligent and vigorous recruiting which was then going on." That Mr. Conkling expressed himself very reluctant to engage in it. The Secretary of War expressed to Mr. Conkling an unqualified opinion that there was nothing in the service which he asked of him incompatible with his position as a member of Congress elect, and gave him reasons at length for that opinion, and insisted that it was as much the duty of Mr. Conkling to use his legal knowledge in aid of the government in carrying on the war as to shoulder a musket to drive the enemy out of this department, and that Mr. Conkling was not at liberty to deny the Secretary of War the benefit of his services.

The Secretary of War also testified that, if there was anything wrong in Mr. Conkling's taking that duty at that time, the wrong rests on the shoulders of the Secretary of War, and not on Mr. Conkling's.

That the Secretary is the person that ought to be responsible, in the public judgment, for forcing upon Mr. Conkling what the Secretary regarded as a public duty; and that he had no other reason for forcing it upon Mr. Conkling than the facts that he thought it a vital duty, and knew Mr. Conkling to be competent to perform it.

The Secretary of War directed Mr. Dana to prepare the papers for Mr. Conkling, in case he should conclude to render the services required, and the papers prepared and given to Mr. Conkling are in conformity with the instructions of the Secretary of War. Mr. Conkling, after consultation with the Judge Advocate General, whose views corresponded with those of the Secretary, undertook to render the services required.

It is clear, from the evidence, that, so far from Mr. Conkling's appointment

having been made by Mr. Dana, and the powers with which he was clothed having been vested in him by Mr. Dana, the appointment and the powers accompanying it were conferred upon Mr. Conkling by the Secretary of War himself; that Mr. Dana had nothing to do with the matter except to prepare the papers under the specific direction of the Secretary. These powers were specified in the following papers :

WAR DEPARTMENT,
Washington City, April 3, 1865.

SIR : I am instructed by the Secretary of War to authorize you to investigate all cases of fraud in the provost marshal's office of the western division of New York, and all misdemeanors connected with recruiting. You will, from time to time, make report to the department of the progress of your labors, and will apply for any special authority for which you may have occasion. The Judge Advocate General will be instructed to issue to you an appointment as special judge advocate for the prosecution of any cases that may be brought to trial before a military tribunal. You will also appear in behalf of this department in any cases that it may be deemed more expedient to bring before the civil tribunals.

Very respectfully, your obedient servant,

C. A. DANA,
Assistant Secretary of War.

Hon. ROSCOE CONKLING.

WAR DEPARTMENT,
Washington City, April 3, 1865.

Hon. Roscoe Conkling having been appointed by the Secretary of War to investigate transactions connected with recruiting in the western division of New York, all telegraph companies and operators are respectfully requested to afford him access to any despatches which he may require, for the purpose of detecting frauds, and bringing criminals to trial.

By order of the Secretary of War :

C. A. DANA,
Assistant Secretary of War.

WAR DEPARTMENT,
Washington City, April 3, 1865.

Hon. Roscoe Conkling having been appointed by the Secretary of War to investigate transactions connected with recruiting in the western division of New York, all provost marshals and other military officers are hereby directed to give him free access to all their official records and correspondence, and to furnish him certified copies of any papers that he may require.

By order of the Secretary of War :

C. A. DANA,
Assistant Secretary of War.

The committee have failed to discover that any extraordinary powers were conferred upon Mr. Conkling without the sanction of the Secretary of War, which enabled him to violate the sanctity of personal business correspondence. It is certain that no complaint that the sanctity of any personal business correspondence has been violated by Mr. Conkling under that authority has been brought to the notice of the committee. Both the Secretary of War and Mr.

Dana testify that the powers given to Mr. Conkling were those usually given in such cases, and in regard to this paper the Secretary of War testifies: "I do not understand the paper as giving him any right to make use of private despatches any way, but to be a *request* only to telegraph officers to afford him facilities for detecting frauds and bringing criminals to trial. The other, as to the provost marshals giving him free access to their records and correspondence, is a general authority which is given in all such cases, and is necessary for any person engaged in these investigations to exercise."

It appears from the testimony of Mr. Dana that the appointment of Mr. Conkling was not made without notifying General Fry, but that on the 3d of April, the day of the date of the papers which were given to Mr. Conkling, and the day on which he signified his willingness to undertake the duty, General Fry was informed by Mr. Dana that the Secretary of War had employed Mr. Conkling for this purpose, and had directed that he, Mr. Fry, should put into Mr. Conkling's hands at once all the papers relating to Major Haddock.

The statement of General Fry's letter in relation to the sums received, or reported to have been received, by Mr. Conkling, being adverted to in another place, the next allegation of the letter is as follows:

"But, as hereafter shown, he was as zealous in preventing prosecutions at Utica as he was in making them at Elmira, and the main ground of difficulty between Mr. Conkling and myself has been that I wanted exposure at both places, while he wanted concealment at one."

In investigating the charge contained in this paragraph, the committee directed their inquiries first to the question whether Mr. Conkling had been zealous to prevent prosecution of persons charged with fraud at Utica in the manner particularly specified in the letter, or in any other manner; and, second, whether Mr. Conkling had manifested any desire that any frauds upon the government at Utica should be concealed, or any inquiry in relation to them suppressed.

In considering these questions it became proper for the committee to determine the extent of the duty which had been imposed upon Mr. Conkling by the Secretary of War, and upon this question the understanding of the Secretary of War, by whom the appointment was made, is thus given in his testimony: "I do not think that Mr. Conkling was authorized or directed to institute prosecutions against any one disconnected with Major Haddock. Major Haddock was the chief of the department; it was alleged that he had accomplices; that these frauds were the result of combinations and conspiracies, official and non-official, for the purpose of plundering the public treasury; to confine the power simply to Major Haddock's case would have been ineffectually narrow. The power was therefore given him to investigate everything in connexion with that transaction, and it would have been unwise for the government to limit it or confine the investigation within a narrower compass than is expressed in the papers. But the assignment of Mr. Conkling on the court-martial determines the question, the order detailing the court and assigning him to act as judge advocate in the trial of Major Haddock and no other person. All that Mr. Conkling could do in respect to other persons than Major Haddock would be to prefer charges or proofs against others besides Major Haddock, and then it would require the order of the department detailing this or some other court of which he might or might not be a member as judge advocate, for the purpose of bringing those cases to trial. Mr. Conkling could put nobody on trial, except by the special order of the department."

No evidence was given before the committee tending to show any direct effort on the part of Mr. Conkling to prevent the prosecution of any one in Utica or elsewhere, and the inquiry was therefore narrowed to the question whether he had in any manner neglected to communicate to the department information which he ought to have given in relation to frauds upon the government, and

especially whether he had neglected to do so because such information would have been used against particular individuals or persons living in Utica district. In the inquiry upon this point the testimony was confined, by the ruling of the committee, to the single fact whether frauds existed which had come to the knowledge of Mr. Conkling, and which he had not made known to the department. Evidence offered in relation to alleged frauds in the Utica district, of which Mr. Conkling was not shown to have had any knowledge, was not received by the committee; nor was evidence received in relation to matters concerning which full information had been given to the government; the committee believing that it was the duty of the War Department to determine what prosecutions should be instituted when the facts were within the knowledge of the department, and that Mr. Conkling discharged his whole duty in that behalf when the information which he had himself received had been communicated to the War Department.

It is true that considerable evidence has been incorporated in the record which would have been excluded by a strict adherence to the rule adopted by the committee. This has arisen from the fact that much of the testimony was taken while the House was in session, and by different members of the committee, not having leave to sit during the sessions of the House, and it was consequently impossible for the members of the committee taking the testimony to understand the precise connexion of the testimony offered with that which had been taken by some other member of the committee, and it was deemed best to be more careful not to exclude any evidence from the record that might possibly be pertinent to the subject-matter of inquiry, than not to admit any that might be wholly irrelevant.

The specifications given in General Fry's letter, under the charge that "as hereafter shown, Mr. Conkling was as zealous in preventing prosecutions at Utica as he was in making them at Elmira," are as follows :

"That Mr. Conkling complained both to the President and to the War Department of the action of General Fry in the removal of Captain Richardson, (the first provost marshal of Mr. Conkling's district,) upon a report of Judge Advocate Turner that the proofs in his case disclosed a reckless persistence in fraudulent practices.

"The second issue was as to the testimony of Captain Crandall, after I had secured his removal from duty on the recommendation of Major Luddington, who thoroughly inspected the district, and reported that though not legally guilty, he had morally perpetrated most glaring, inexcusable fraud on the government, and that he had quieted his conscience by casuistry and regulated his actions by the counsel of unscrupulous legal advisers. Mr. Conkling failed to get Captain Crandall restored.

"The third issue was as to the government's employing counsel to defend Captain Crandall after he had been relieved, and had carried with him, in violation of the orders of the department, some twenty thousand dollars local bounty deposited with him in behalf of recruits, and in regard to which he got into litigation. In this Mr. Conkling failed."

The words "as hereafter shown," as they appear in connexion in General Fry's letter, that Mr. Conkling was as zealous "in preventing prosecutions at Utica as in making them at Elmira," must refer to the three specifications above given, because, unless shown in one or the other of those specifications, it is not shown at all in General Fry's letter that Mr. Conkling was zealous "in preventing prosecutions at Utica," or that "he wanted concealment there." It was contended before the committee that these words, "as hereafter shown," limited the charges against Mr. Conkling to the three specifications above given. If this be so, the specifications signally fail to bear out the charge made. In the case of Captain Richardson it was not the duty of Mr. Conk-

ling to have reported his case to the government, for the reason that the government already had a full report of the case from Judge Advocate Turner, and it was for the department, and not Mr. Conkling, to determine what action should be taken thereon, and because, several months before the appointment of Mr. Conkling to investigate frauds in the western division of New York, this matter had been placed in the hands of William A. Dart, the United States district attorney, who had charge of the case when Mr. Conkling received his appointment. Mr. Conkling manifestly did not attempt to prevent the prosecution of Captain Richardson by neglecting to furnish information which was within his knowledge and not within the knowledge of the government, nor by neglecting to institute proceedings against Richardson, because that was a matter with which he had nothing to do. Did he attempt to prevent prosecutions at Utica by complaining of the action of General Fry in the removal of Captain Richardson? The facts are as follows :

December 30, 1864, Mr. Conkling addressed a letter to the President of the United States, in which the fact of the removal of Captain Richardson is stated, and the belief of the writer that it had been accomplished by the efforts of Major Haddock, in whom the loyal people had no confidence, and who was suspected of fraudulent practices, (which suspicion was afterwards sworn to have been well founded.) The letter refers to a rumor that charges had been made against Captain Richardson, based, as the letter states, upon affidavits prepared by those whose character does not raise a presumption in favor of their motives. And then the writer says : " Of course I have nothing to say as to the truth of the charges, if there are charges, as I do not know what they are. I ought, however, to say that in common with others I have kept a pretty close watch upon Captain Richardson, and that I have never discovered any corrupt practices in him. But the point I wish to submit is his being thus summarily disgraced without knowledge of the ground and without his being heard." The letter states that the supervisors through whom the men have been raised had signed and lodged with the writer an earnest protest against the proceedings. No complaint is made in the letter against General Fry by name, or by special reference. The letter referred to was written by Mr. Conkling, and the concurrence of the following eminent citizens of that district was indorsed thereon : Hon. W. J. Bacon, Ellis H. Roberts, Hon. Ward Hunt, Erastus Clark, T. R. Walker, and C. H. Hopkins. The committee have failed to discover any evidence of any unworthy or improper motive on the part of Mr. Conkling, or the other gentlemen concurring in that letter, nor can the committee perceive how it is possible to imagine that the letter affords any indication, however remote, that Mr. Conkling was zealous to prevent the prosecution of Mr. Richardson, or desirous of concealing his acts from scrutiny. Indeed, the main object of the letter seems to have been to ask an investigation.

In relation to Captain Crandall no concealment was possible, for the reason that a full report had been made by Major Luddington before Mr. Conkling is shown to have had anything to say or do in reference to him ; and surely Mr. Conkling could not be in fault for not prosecuting him, when, as stated in Major Luddington's report, he had incurred no legal guilt ; consequently it is not shown by any evidence in relation to Captain Crandall that Mr. Conkling was zealous in preventing prosecutions at Utica, or desired concealment of any frauds there. And here the committee might leave this matter of Captain Crandall, but it is considered but just to Mr. Conkling that a true statement of his connexion with matters relating to Captain Crandall should be given. It appears from the evidence of Hon. Ward Hunt that Mr. Crandall was selected and recommended as a proper person to succeed Captain Richardson by said Hunt, Judge Bacon, and other citizens of the district ; that Mr. Conkling refused to have anything to do with the selection or designation of any individual for that position. Judge Hunt testifies that " Mr. Crandall was selected as being an eminently honest

and upright man, and a man of the best reputation and character. It was believed by every one that if there was to be found in the county one honest man, he was the one, and that the judgment of the citizens of Oneida county is unanimous as to the integrity of Captain Crandall." This statement is corroborated by several other witnesses. No evidence was offered before the committee showing, or tending to show, that Mr. Crandall had been guilty of any fraud or dishonest practice which ever came to the knowledge of Mr. Conkling; and the inquiry in this particular was confined to that limit. The committee are of opinion that the evidence does not show that Mr. Conkling was guilty of any impropriety in recommending the restoration of Captain Crandall after Major Luddington's report, but on the contrary, it does appear that his action was limited to a simple expression of opinion, which opinion was concurred in very generally by the citizens of that district, and supported by the report of the detective selected by General Fry to investigate the acts of Captain Crandall. It has not been shown to the committee that General Fry, or any other person believed that Captain Crandall should have been prosecuted. Mr. Dana testifies to the statement of General Fry that he knew nothing which Captain Crandall had done or omitted which he should not have done or omitted. General Fry, in his letter of November 6, published in the *Globe*, says that Captain Crandall was suspended from duty for refusing to turn over the \$20,000 bonds to a disbursing officer, an act for which he deserved no censure in the opinion of the committee, for the reasons herein stated. The letter of General Fry to Mr. Blaine, states that Captain Crandall was discharged on the recommendation of Major Luddington, who reported that though not legally guilty he had morally perpetrated a most glaring and inexcusable fraud on the government he was sworn to serve. The committee have not found in the evidence before them any evidence of such moral fraud on the part of Captain Crandall, and certainly no facts had been shown to be within the knowledge of Mr. Conkling, in relation to Captain Crandall, which would have rendered it improper for Mr. Conkling to have recommended his restoration to office.

An attempt was made to show, by the testimony of Patrick J. Kinney, that when Aaron Richardson was arrested at Utica he was set at liberty by the officers having him in custody, after an interview which he had at his own request with Mr. Conkling. In relation to this matter it is only necessary to say that Mr. Richardson had made important disclosures to the government; was a witness in the prosecution of Haddock; that the acts of Mr. Conkling in relation to the witness were fully known to and approved by the Secretary of War.

In relation to the third specification above stated, the facts are as follows:

Captain Crandall required Aaron Richardson, a bounty broker, to deposit security with him that certain men furnished by said Richardson, and enlisted, should go forward to the front and be there receipted, and the sum of \$20,000 in bonds of Oneida county was deposited as such security. Some men that were furnished by Richardson refused to receive any local bounty whatever, insisting that all they claimed or desired was the bounty that government paid others; they took fifty dollars and would take no more. In all of those cases the right of the recruit to receive the local bounty was fully explained to him by Captain Crandall. But as a precaution against desertion, Captain Crandall required Richardson to deposit five hundred and fifty dollars for each man, as security for receipt of the recruit at the general rendezvous.

After depositing the bonds, Richardson claimed that Provost Marshal Crandall had no legal authority to require security for the appearance of the recruit, and demanded that the bonds should be refunded to him. Of the men furnished by Richardson, thirty-one deserted before reaching the front, seven of whom were retaken.

These bonds were not "local bounty," nor were they "deposited in behalf of recruits," as stated in General Fry's letter. They either belonged to Richardson,

who deposited them, or to the government, for whose security they were deposited. Hon. Ward Hunt testifies that "about \$13,000 would have been forfeited under the contract, about that amount of men having deserted. About \$7,000 no one would have any claim to as against Aaron Richardson."

On the 4th of March, 1865, Major Haddock directed Captain Crandall to turn over those bonds to S. Floyd Hoard, special agent. Captain Crandall sought the advice of distinguished and able counsel, and was told he could not safely turn over these bonds to Major Haddock without risk of being held personally responsible for the amount; and it also appears that Captain Crandall and his advisers had grave apprehensions, since shown to have been well founded, that it would be unsafe to have placed the bonds in the possession of Major Haddock. After taking counsel on the 11th of March, Captain Crandall stated the whole matter in relation to those bonds fully in a letter to General Fry, and asks General Fry to advise him what to do, as follows: "Major Haddock calls upon me to forward the money and securities to him; counsel of high standing advise me that I cannot safely do so, but that I am responsible to the parties entitled to it. The money and securities are now on hand, and I wish nothing so much as to pay them over. Can I safely pay this money to Major Haddock, and will the government protect me against the persons who claim it? Be pleased to instruct me on this point."

No answer was made by General Fry so far as the committee can discover. On the 30th of March, 1865, General Fry ordered Captain Crandall to turn over to Major Lee all moneys, bonds, and other evidences of indebtedness in his possession "belonging to enlisted men" who had deserted either before or after arriving at the general rendezvous, and all moneys, bonds, and other evidences of indebtedness in his possession belonging to enlisted men other than deserters to the United States paymaster stationed at Elmira. It will be seen that this order did not include the \$20,000 of bonds, which were not claimed to belong to enlisted men, whether deserters or others. It does appear clearly that Captain Crandall never claimed any right to hold these bonds on his own account; that he was anxious to be rid of them, and only sought to protect himself from liability; that he deposited the bonds in a bank in Utica, and that when suit was brought against him for the bonds, he advised General Fry of the fact, stating that he had no interest in defending the suit, and asking that the government should defend its right to the bonds. The government never having done this, the county of Oneida has given to Captain Crandall proper security to indemnify him, and assumed the defence of the suit. These bonds belonged unquestionably either to Aaron Richardson or to the government. If they belonged to Richardson, it is not easy to see why the complaint should be made that Captain Crandall had violated the orders of the department in not turning over the bonds to Major Haddock or Major Lee, leaving himself liable to Richardson for this amount. If they belonged to the government, it is still more difficult to see why the government should not have employed counsel and protected its right to them. The defence of that suit was in no sense a defence of Captain Crandall, but simply the maintenance by the government of its right to the bonds. Captain Crandall having been removed from office, and having no interest in the question, it seems absurd to require or expect him to defend, at his own expense, a suit which could not benefit or harm him, however it might be decided.

The committee regard the action of Mr. Conkling, in directing the attention of the department to the condition of this fund and the manifest danger of its loss to the government, as highly commendable. Nor have the committee been able to discover anything improper in the conduct of Captain Crandall in relation to these bonds. There is one other statement in the letter of General Fry that comes within the limit of the present investigation, (to wit, the charges against Mr. Conkling;) that statement is as follows: "If while acting as judge advocate under the extraordinary inquisitorial powers bestowed upon him by

his friend, Mr. Dana, he came into possession of any fact impugning my integrity as a public officer, he was guilty of gross public wrong and unfaithfulness if he did not instantly file formal charges against me with the Secretary of War. He can therefore only escape the charges of deliberate and malignant falsehood as a member of Congress by confessing an unpardonable breach of duty as judge advocate." No powers whatever, "extraordinary and inquisitorial" or otherwise, were bestowed upon Mr. Conkling by Mr. Dana; whatever powers he had were given him by the Secretary of War, and not at the suggestion of Mr. Dana. Mr. Conkling was discharging the duties of judge advocate only in the prosecution of Major Haddock. He had nothing whatever to do with filing charges against General Fry. To this point the committee cite the testimony of the Secretary of War as follows: "In the prosecution of Major Haddock to final judgment, Mr. Conkling performed all the duty I expected him to perform;" and also the testimony of Mr. Dana, as follows: "I never knew of any authority given to Mr. Conkling in any form, directly or indirectly, at any time to investigate the acts of General Fry, or to file charges against him. It would have been evidently improper for him to file charges against General Fry, according to the usages of the department."

ACCUSATIONS AS TO DOUBLE OFFICES AND IMPROPER FEES.

Another of the statements of General Fry's letter which the committee are directed to inquire into is in these words:

"For his services in this connexion, Mr. Conkling received, on the 9th of November last, from the United States the modest fee of \$3,000. Whether he received, as it has been reported, from his district \$5,000 more for the same service, and whether he received additional fees from guilty parties for opposing proceedings at Utica, I am unable now to say."

This is asserted in connexion with and after the statement that "In the summer of 1863 Mr. Conkling made a case for himself by telegraphing to the War Department that the provost marshal of his district required legal advice, which he was thereupon empowered to give."

The effect of this statement is an insinuation that the employment of Mr. Conkling in this prosecution was by him improperly secured; that the amount of his compensation by the government was excessive, and that there was *some* reason to believe that his district had paid him, besides the fee from the government, for the same service, five thousand dollars; and, besides this, that he had been compensated by guilty men for corrupt services which he had rendered them in opposing the prosecutions which he had been employed to make.

The charge is not mitigated in its severity by the fact that it *only* insinuates, and seeks for its author the cover of alleged report. These features only give to it the enhanced capacity for mischief which grows out of the increased difficulty of disproving what is only vaguely charged, instead of being stated with definiteness as to time, place, and circumstances. The committee can find, in all that has come to their knowledge, absolutely nothing which can furnish a pretext for that part of this charge which relates to the five thousand dollars and the fee from guilty parties—not even the existence of any such report as the charge alludes to. The accusation insinuated is not only utterly false in fact, false in each particular, both as to the five thousand dollars from the district, and that from guilty parties, but, so far as proof could be found, it was false in the most insufficient apology for its utterance, to wit, the existence of an alleged report giving it credence. No accusation can well be conceived more intensely hurtful than the last part of this one is. To say of any one that he is sordid or voracious in his methods of getting gain, is to deny to him most of the qualities of a gentleman. To add to this that he gets money by ordinary frauds, is

to exclude him from all just title to the common rights of civil and social life. To add, again, that his frauds were associated with compounding of felonies, and his gains the price of their concealment, is to stamp the accused with an ineffable infamy. But if to all this you add that he who is charged with taking the price of the suppressed crime is one of the members elect of his government, and as such charged with its safety; that, in addition, he had assumed special duties as to the prosecution of the very crimes for the alleged suppression of which he has taken pay; and that the crime suppressed was at least a moral treason against the government of which he was an officer elect, and a treason, too, committed at a time when his government's existence was in deepest peril; when, we say, all these elements combine in the accusation, the guilt charged assumes a depth of turpitude which can hardly find a parallel. That such a charge should, without any shadow of cause, be made, *in any way*, seems almost incredible. But that it should be carefully couched in the forms of insinuation, showing timidity and solicitude in the author to avoid responsibility, and should then be written out and sent into Congress, to be read in the presence of the nation, and preserved against the accused and his children in the history of Congress, presents, as a libel, a case almost new—certainly singular—for its bad eminence as a wanton and inexcusable violation of the rights of a citizen and member of the government.

The use that was made in the House of that part of this charge relating to the fee of \$3,000 makes it due to Mr. Conkling that it should be determined whether his being a member elect of this house rendered it improper or illegal for him to take the employment or its compensation; and the insinuation contained in this statement that the fee was excessive renders it proper to inquire whether it was such. As to the latter point, the committee had no hesitation in coming to the conclusion that Mr. Conkling's compensation for services rendered to the government was a reasonable one. He had nothing to do with fixing its amount. That was left wholly to the government. He accepted the service with reluctance, and upon the most pressing and repeated solicitations of the Secretary of War. He took it at the sacrifice of other professional business of equal value, or of perhaps greater value to him than he realized for this. He took it at a time when it was almost vital to the interests of the military service in New York that they should be rendered. The committee are of opinion that the Secretary of War rightly judged that no one could be found more eminently qualified on all accounts for the efficient discharge of that peculiar service, under the peculiar circumstances in which it was undertaken and rendered. The duties he assumed were discharged with consummate ability, and with integrity, diligence, and complete success. They went through about five months. They involved the examination of a large field of complicated facts; a labyrinth of frauds and villanies. The record of the trial makes some fifteen hundred pages of matter, and resulted not only in discovering and punishing these crimes against the government, but also in the conviction and punishment of the acting provost marshal general of west New York, Major Haddock, and in the recovery from him of a fine of \$10,000, paid into the United States treasury, besides the further sum of over \$200,000, which he was constrained to pay over after the commencement of the prosecution.

The committee have come unanimously to the conclusion that the conduct of Mr. Conkling, in entering upon that service, and in its management throughout, was not only free from any improper, selfish, or unpatriotic motives, and from all just grounds of reproach, but his services were singularly able, faithful, and in results valuable to the government.

THE LAW.

The only other question touching this part of the matter referred to the committee to be considered is, whether there was any legal impediment in the way of Mr. Conkling, he being a member elect of the 39th Congress, assuming the relation he did assume to the prosecution of Haddock. The committee have sought carefully to inquire whether there was any such legal impediment.

RIGHT OF DEPARTMENTS TO EMPLOY AND PAY AGENTS.

In determining upon this question, it seems perfectly safe to assume that what is said by the Supreme Court of the United States, in *Gratiot vs. United States*, 15 Peters, 371, is the settled law applicable to this class of cases, to wit, that "a department charged with the execution of particular authority, business, or duty, has always been deemed incidentally to possess the right to employ the proper persons to perform the same." * * * "And also the right, when the service or duty is an extra service or duty, to allow the person so employed a suitable compensation." "This doctrine is not new," says the Supreme Court, "but is fully expounded in the cases of *The United States vs. Riley*, 7 Peters, 18, and *The United States vs. Fillebrown*, 7 Peters, 28." And the court adds: "that, in order to justify a refusal to allow such compensation, it is indispensable to show that there is some law which positively prohibits, or by just implication denies, any allowance of such compensation." This was said by the court in a case where it was an officer of the United States who was claiming the compensation for services outside of his salary.

THE PROHIBITIONS.

We assume, then, that there is nothing in the *general* relations of a member elect of Congress to his government, nor in the *general* principles of the law growing out of that relation, which would forbid Mr. Conkling becoming the agent or attorney of the government, and receiving compensation therefor; and that if his relations to the Haddock trial were illegal, it must be owing to some express provision of the Constitution or of the law. Is there any such legal prohibition? The legal provisions which have been brought to the attention of the committee, and which are supposed to have some bearing upon the question of the legality of Mr. Conkling's relations to the Haddock trial, and his compensation therefor, are the following:

1. The Constitution (Art. 1, Sec. VI) declares that "No person holding an office under the United States shall be a member of either house during his continuance in office."

2. The 18th section of the act of 31st August, 1852, (1 Brightly, 821,) provides that "No person hereafter who holds or shall hold any office under the government of the United States, whose salary or annual compensation shall amount to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duty of any other office."

3. The 3d section of the act of 3d March, 1839, (5 United States Statutes, 349, and 1 Brightly, 820,) which reads as follows: "No officer in any branch of the public service, or any other person, whose salaries, or whose pay or emoluments is or are fixed by law or regulations, shall receive any extra allowance or compensation in any form whatever for the disbursements of public money or the performance of any other service, unless the said extra allowance or compensation be authorized by law."

4. The 2d section of the act of 23d August, 1842, (5 United States Statutes, 510, and 1 Brightly, 820,) which reads as follows: "No officer in any branch of the public service, or any other person, whose salary, pay, or emoluments is or are

fixed by law or regulations, shall receive any additional pay, extra allowance or compensation in any form whatever for the disbursements of public money or other service or duty whatever, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for such additional pay, extra allowance, or compensation."

5. The 12th section of the act of 26th August, 1842, (1 Brightly, 821, 5 United States Statutes, 525,) which reads as follows: "No allowance or compensation shall be made to any clerk or other officer by reason of the discharge of the duties which belong to any other clerk or officer in the same or any other department; and no allowance or compensation shall be made for any extra service whatever which any clerk or other officer may be required to perform."

6. The 1st section of the act of 30th September, 1850, (1 Brightly, 821, 9 United States Statutes, 542,) which reads as follows: "The proper accounting officer of the treasury, or other pay officers of the United States, shall in no case allow or pay to one individual the salaries of two different offices on account of having performed the duties thereof at the same time. But this prohibition shall not extend to the superintendents of the public buildings."

7. The 1st section of the act of April 21, 1808, (1 Brightly, 190, and 2 United States Statutes, 484,) which reads as follows: "No member of Congress shall, directly or indirectly, himself, or by any other person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement hereafter to be made or entered into with any officer of the United States in their behalf, or with any person authorized to make contracts on the part of the United States; and if any member of Congress shall, directly or indirectly, himself, or by any other person whatsoever in trust for him, or for his use or benefit, or on his account, *enter into, accept, or agree for or undertake or execute any such contract or agreement*, in whole or in part, every member so offending shall, for every such offence, upon conviction thereof before any court of the United States or the Territories thereof having cognizance of such offence, be adjudged guilty of a high misdemeanor, and shall be fined three thousand dollars; and every such contract or agreement as aforesaid shall moreover be absolutely void and of no effect."

8. The 1st section of the act of June 11, 1864, (2 Brightly, 105, and 13 United States Statutes, 123,) which reads as follows: "No member of the Senate or House of Representatives shall, after his election and during his continuance in office, nor shall any head of a department, head of a bureau, clerk, or other officer of the government, receive or agree to receive any compensation whatsoever, directly or indirectly, for any services rendered or to be rendered, after the passage of this act, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever; and any person offending against the provisions of this act shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding ten thousand dollars, and by imprisonment for a term not exceeding two years, at the discretion of the court trying the same, and shall be forever thereafter incapable of holding any office of honor or trust or profit under the government of the United States."

THE CONSTITUTIONAL PROHIBITION.

These are all of the existing laws which have come to the attention of the committee, and which are supposed to contain anything bearing, either nearly or remotely, upon the matter of this service of Mr. Conkling being prohibited by law. There are other laws which bear upon other points in this inquiry, which will be alluded to.

With these provisions of the Constitution and law before us, and assuming as law that which we have above stated from the case of *Gratiot vs. The United States*, (15 Peters, 371,) we inquire whether any of these provisions of express law do away with that general principle as applicable to the matter before the committee; or whether either of these provisions prohibit or render illegal what was done by Mr. Conkling in the Haddock trial, he being a member elect of the 39th Congress.

To avoid, if we can, confusion, we first consider this without reference to the question whether Mr. Conkling should be paid, as a member of the 39th Congress, for the same time covered by his service in the Haddock trial, and for which time it is suggested he was paid by the fee of three thousand dollars, and let the inquiry be first disposed of whether it was illegal for Mr. Conkling to assume that service and to take compensation therefor.

And, in disposing of this inquiry, let it first be granted that Mr. Conkling, in what occurred in that service, became and was a "judge advocate," in the strictest sense, and that he was thereby made an officer of the United States, and was not a mere agent and counsel of the government.

In entering upon this inquiry, the committee do not forget the truth nor the supreme importance of that principle of our government which was pressed upon the attention of the committee in the argument of this case, and which received, during the 38th Congress, the sanction of this house in its approval of the report in the cases of Robert C. Schenck and of Francis P. Blair. The principle to which we allude is thus stated in that report:

"Nothing is plainer in the theory and plan of this government than the distinct and separate organization of the executive, judicial, and legislative departments, and the sedulous care with which each has been clothed and guarded in the exercise of duties entirely independent of the others. Yet the attempt to invest the same person with two offices, one legislative and the other executive, and require of him at the same time the discharge of the duties of both, is, whether they be conflicting or not, a commingling of the duties of the executive and legislative departments. It is bringing the Executive himself into the very halls of Congress, and if persisted in, might ultimately prove as pernicious as if he had a seat therein, and as many votes as he had commissions. If one representative in Congress may at the same time hold under the Executive the office of major general, so may another, and another may as well be a brigadier general, or hold any other official position in the military service under the Executive and commander-in-chief, and bound to obey him. By such process the House may at any time be put under the control and become the pliant instrument of the Executive to any end. Its members would cease to be the representatives of the people, and become only the agents of the Executive."

The framers of the Constitution saw this so clearly, and felt the independence of the legislative over the executive department was so essential and vital that they deemed the inhibition worthy of an express constitutional enactment, that "no person holding any office under the United States shall be a member of either house during his continuance in office." (Art. 1, sec. VI.)

Still, in view of this important principle, the committee have not been able to see how the acceptance and discharge of the duties of the office of judge advocate by Mr. Conkling, the duties, tenure, and existence of which office (if such it was in him) were in their nature such as would most likely be, and were in fact, wholly ended and gone before he was, by law or the Constitution, required to qualify as a member of Congress, or to enter upon, assume, or discharge any duty as such, conflicted with these principles. Upon this subject-matter the committee deem the following two propositions to be entirely settled in our government: 1. "The acceptance by a member of any office under the United States, after he has been elected to, and has taken his seat in Congress, operates as a forfeiture of his seat." (See *Van Ness case*, Cl. and Hall, 122; *Schenck*

and Blair case, 38th Congress, &c.) 2. "Continuing to execute the duties of an office under the United States after one is elected to Congress, but before he takes his seat, is not a disqualification, such office being resigned or extinct prior to the taking of the seat" (See Hammond *vs.* Herrick, Cl. and Hall, 287; Earl's case, *ibid.*, 314; Munford's case, *ibid.*, 316; Schenck and Blair's case, 38th Congress, &c.)

The committee agree with the reasoning and conclusions of the report, from which we have already quoted, that the *continuance to hold* another office after the time when the law and Constitution requires the member elect to qualify and enter upon the discharge of his duties as a member, is, in legal contemplation, an act of election by him to vacate his office as a member; and such *continuance to hold* the other office is equivalent, in its legal significance, to the act of *accepting* and entering upon an office tendered after the member was qualified. Both alike vacate the legislative office. The act, therefore, of Mr. Conkling in *accepting* an office not previously held, which, from its nature, would terminate before he would be required to assume any duty as a member, had no more nor less effect in depriving him of his right to enter upon his office as a member of Congress than the act of continuing, after he was elected, to exercise the duties of an office which he had previously entered upon would have. Neither operates to vacate his seat in this house, the first office being such as must be and was wholly ended or abandoned before the time comes when he is required to enter upon his duties as a legislator. The act of acceptance of such a temporary office at such a time did not, in its nature, indicate any election or purpose to abandon or resign the membership in Congress. "The object of the constitutional prohibition upon an officer becoming a member of Congress is attained, so far as it can be by this provision, if the inhibition attaches the moment the member enters upon the discharge of his duties as such, and nothing is gained by an earlier application of it." There was, therefore, no constitutional objection to Mr. Conkling's accepting this office of judge advocate, if he did become such officer.

PROHIBITORY STATUTES.

The acts of Congress above referred to, of the dates, respectively, of March 3, 1839, and of the 23d and 26th of August, 1842, are, as is said by the Attorney General of the United States, (5 Opins., 768,) "the same in their sense and meaning;" and as to all of these acts, including that of September 30, 1850, above cited, he says "they do not forbid a person from holding two compatible offices at the same time. They were intended to prevent arbitrary extra allowances in each particular case, but do not apply to distinct employments with salaries affixed to each by law or regulations." (See also 6 Opins., 80 and 325.)

If the committee were left to their own construction of these statutes of 1839, 1842, and 1850, we would have attained the same conclusion to which the Attorney Generals arrived in these opinions. But when there is added to the force of these and several other equivalent opinions by the Attorney Generals of this government, the weight of the fact that all these statutes were in force when most of the very numerous decisions by this house were made, determining that there was nothing either *illegal* or unconstitutional in a member of Congress elect (but not qualified) holding an office under the United States government, provided he did not hold it after the time came when the Constitution required him to assume his duties as a legislator, the committee could not hesitate in coming to the conclusion that neither the Constitution nor either of these statutes alluded to in the opinion of the Attorney General, were violated when Mr. Conkling became (if he did) special judge advocate, and took compensation therefor. We say "took compensation therefor," because in all the

cases we have cited the member elect, as the committee understand the history of the cases, received his compensation for his first office during the time he held it, but not his compensation as a member for the same time.

THE STATUTE AGAINST JOBBING.

Although not quite in proper order, it may perhaps as well be said here as anywhere else that the committee do not see what the statute of April 21, 1808, has to do with this inquiry. That act renders it a crime for any member of Congress to "undertake, execute, hold or enjoy, in whole or in part, any contract or agreement, hereafter to be made or entered into, with any officer of the United States, in their behalf, or with any person authorized to make contracts on the part of the United States." No "contract" or "agreement" has been proved in this case between Mr. Conkling and any other person, coming within what is the obvious meaning of these words in the act of 1808. The design of that statute is what is expressed by the Attorney General of the United States (4 Opins., 48) when he says, "The object of the statute is only to prevent jobbing between members of the legislature and the Executive for the primary advantage of the former." Surely the practice which has been general and uninterrupted, as must be within the personal knowledge of every intelligent citizen, of members of Congress acting as the attorneys of their government, has not subjected all such attorneys to indictment and fine of three thousand dollars. No one has suggested that such is the law, and the committee would have made no allusion to it but for the fact that it is presented to our consideration in the brief of Mr. Conkling.

THE ACT PROHIBITING MEMBERS BECOMING CLAIM AGENTS, ETC.

The act of June 11, 1864, cited above, renders it a high crime for any member of Congress, at any time after his election, "to receive or agree to receive any compensation for any services rendered to any person in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or interested directly or indirectly, before any department, court-martial, bureau, officer, or any civil, military, or naval commissioner whatever."

This statute would have been directly in point had Mr. Conkling received compensation for being the counsel for Haddock in this court-martial. The fact that this recent statute, passed in full and thoroughly intelligent view of all the important questions of law, which your committee is required to consider, carefully confines its prohibitions to preventing members elect from taking compensation for services rendered before courts-martial, &c., "to any person" and against the government, and does not prohibit such compensation being paid by the government, nor prohibit such service being rendered in its favor; and this, too, in the identical case before the committee, is one of the strongest possible legislative determinations of the very question we consider. Here is a law which comes up squarely, face to face, in front of that exact question we consider, to wit, whether a member elect to Congress ought to be permitted to receive compensation for services rendered to either of the parties to a trial before a court-martial. And the Congress said it should not be lawful for him to take compensation for services rendered to one side—"any person"—and now shall we be told that Congress meant to declare that it was equally illegal to take compensation for services rendered to the other side, to wit, for services in favor of the United States? On the other hand, is this not a conclusive legislative determination that a member elect might be compensated for services rendered to that other non-prohibited side of the case? It so seems to the committee.

ACT OF 1852.

This disposes of all the alleged legal prohibitions upon Mr. Conkling's entering upon the service, unless it be, (and we think including) that supposed to be, contained in the 18th section of the act of 21st July, 1852, already cited (1 Brightly, 821,) and which is as follows: "No person hereafter who holds or shall hold any office under the government of the United States, whose salary or annual compensation shall amount to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office."

It was suggested in the debates in the House, and earnestly urged elsewhere, that this section, even if it did not render Mr. Conkling's services upon the Haddock trial illegal, does render it illegal for him to receive compensation for his services upon that trial. The committee is not quite certain that the order of the House directing it to inquire into the charges against Mr. Conkling contained in the letter of General Fry to Mr. Blaine admits of the committee's examining the question whether Mr. Conkling was entitled to take that compensation of \$3,000. That letter does not charge that the taking of *any* fee was illegal, but only insinuates that it was excessive. Still, after what occurred touching this double compensation in the debates of the House, the committee deem it proper to examine this question also. If it be outside of the duties of the committee, an easy way of preventing mischief from this part of the report will be to disregard it.

The determination of the question whether this act of 1852 renders it illegal for Mr. Conkling to receive, in addition to his salary as a member of Congress, this \$3,000, requires the committee to determine one or more of the following questions:

1. Is one who has been elected to Congress, but who has not yet taken the oath of office, nor in any way entered upon the discharge of the duties of his office, and prior to the time when, by law, he is required to enter upon these duties, "a person who holds any office?"

2. Granting that he is, in the case stated in the preceding question, a person holding an office, then does he hold an office "under the government of the United States" within the just sense of this section?

3. If he, as a member elect, is an officer "under the government of the United States," then did Mr. Conkling, in what he did in the Haddock service, become an officer of the United States?

4. If he did not become an officer of the United States, did he, in that Haddock trial, discharge "the duties of any other office" and receive compensation therefor?

IS A MEMBER ELECT ONE HOLDING OFFICE?

The first of these inquiries is, in the judgment of the committee, answered so far as is necessary in deciding upon the effect of the act of 1852, by the cases of Hammond, of Earl, of Munford, of Schenck, and others, which we have already cited. These cases, as we have seen, all determine that, prior to the time when the Constitution requires the member elect to commence the duties of his legislative office, and before he has assumed these duties and taken the oath of office, he may receive compensation for discharging the duties of another office. As we have already said, these cases do not determine that he may also be compensated as a member of Congress for the same time for which he was compensated in the other office. But they do determine that being a member elect of Congress does not make him an "officer" in such sense as to bring him within the prohibition of the act of 1852. This question, in substance, received the careful attention of the House in the 38th Congress, upon an able report of one of its committees. The committee and House came to what your committee

deem a just conclusion, when it determined that one merely elected to Congress, but who had not entered upon his duties nor been qualified, was not a member of this house, that is, did not hold an office so as to prevent him from continuing to hold another office and receive compensation therefor. The committee, in concluding their argument showing that one merely elected to Congress was not a member of the House, and not, as such, amenable to its jurisdiction, says: "The committee are not aware of any attempt to punish a representative elect, and of but one instance of an attempt to expel one. A resolution was adopted by the last House, under the previous question, to expel a person who was a representative elect, but had never signified his acceptance of the office, nor qualified, nor even appeared in Washington for the purpose of taking his seat."

In that case the House determined, in effect, that the act of 1852 did not prohibit General Schenck, while a member elect of Congress, from receiving the pay of another office, to wit, that of major general of volunteers.

This is the last case in which this question came before the House. But the same question received in the 15th Congress, in the case of *Hammond vs. Herrick*, (Clark and Hall, *Contested Elections*, 293, 294,) a still more elaborate and exhaustive consideration. In the report in that case (which also received the sanction of the House) this doctrine was explicitly stated, and was affirmed after a thorough review of the English and American cases touching it. The case held the rule which was stated by the committee in these words: "Neither do *election and return* constitute *membership*." * * * "Our rule in this particular is different from that of the House of Commons. It is also better, for it makes our theory conform to what is fact in both countries—that the act of becoming in reality a *member of* the House depends wholly upon the person elected and returned. *Election* does not of itself constitute membership, although the period may have arrived at which the congressional term commences."

This house has again and again determined that men elected to it, who do not appear in the body and assume the constitutional oath of office, are not to be reckoned as members of the House in determining the number required to make a majority or quorum of the body.

FRANKING PRIVILEGE, ETC.

The committee, in coming to this conclusion, have not overlooked the fact that members elect, but not qualified, are by the laws accorded certain privileges and salary. The effect of this right to enjoy these privileges before becoming qualified as a member of the legislative body has received the fullest attention both in this house and in the English Parliament. The result attained is, that these special privileges are not necessarily indicia of actual official authority or station, and may by law as well be attached to one's person before and after he is an officer as during his official tenure. The representatives after the expiration of their terms, the Presidents of the United States after such expiration, and the widows of certain ex-Presidents, all have the franking privilege, and these are not then officers of the government in any sense. The assumption of office in this country, as well as its relinquishment, is voluntary, and one elected to Congress is at perfect liberty to refuse to assume the office. His exercise of the franking privilege, with the knowledge that he never would enter upon the duties of the office, would be an act of bad faith towards his government; but that would not render him a member of Congress, nor would the exercise prevent him, should failure of health or other cause render it improper to enter upon his office, from rightly refusing ever to take the office.

Other and perhaps more conclusive considerations bearing upon this important

inquiry might be given; but it is not deemed best to pursue it further. The committee are entirely satisfied that the law of this house is fully and rightly settled as to this point, and that he is not a *member* of Congress, nor one who "holds any office under the government of the United States," who has only been elected to this house, but who has never taken any oath of office nor entered upon the duties of that position.

Mr. Conkling was not prohibited by the act of 1852 from receiving compensation as he did for his services in the Haddock trial, even if his duties on that trial were official. We have not yet reached the question of his right to be also paid his salary as a member of this house for the same time covered by the Haddock service.

IS AN ACTING MEMBER OF CONGRESS AN OFFICER OF OR UNDER THE GOVERNMENT?

The next proposition the committee were called to consider and decide is thus stated by Mr. Conkling:

"A representative in Congress is not at all within the words '*person who holds an office under the government of the United States.*' Senators and representatives do not hold offices *under the government of the United States.* They are part of the government, and therefore not affected one way or the other by these provisions."

If the committee were sustained in the views they have taken of other propositions in this inquiry, then the consideration of this one would not be necessary to the determination of what is before the committee. But as the committee may not be sustained in the other propositions which dispose of the case, they have felt impelled carefully to consider this one.

The proposition that a member of Congress who has been sworn into office is not an officer under the government of the United States, within the sense of the act of 1852, is supported by an appeal to authorities expounding the sense of these words as used in the Constitution.

These or similar words are found in the Constitution in the following clauses:

1. That prohibiting senators and representatives during the term for which they are elected from being appointed to "any civil office *under the authority of the United States,*" which was created or its emoluments increased during such time.

2. That prohibiting a person "holding *any office under the United States* from being a member of either house of Congress."

3. That giving Congress the power to make all laws necessary to carry into effect the powers vested by the Constitution in "*any officer of the government of the United States.*"

4. That prohibiting every "*person holding any office of profit or trust under the United States* from accepting any present, office, &c., from any king, prince or foreign state without the consent of Congress."

5. That prohibiting every senator, representative, and person "*holding an office of trust or profit under the United States*" from being appointed an elector for President, &c.

6. That providing that the President shall commission "*all officers of the United States.*"

7. That providing that "*all civil officers of the United States* shall be removed from office on impeachment."

8. That prohibiting any one who has suffered a judgment of impeachment from holding or enjoying "*any office of honor, trust, or profit under the United States.*"

The proposition stated, and which the committee are asked to affirm, is, that a member of Congress and his office are not included in the scope or meaning of

the words of the Constitution "officer under the United States," or "civil officer under the authority of the United States." It is said that he is part of the government, and is not under it. It seems to be indicated that he may, in the sense of the Constitution, be an officer *of* the government, but not *under* the government. In the impeachment of Blount (Wharton's State Trials, 268, &c.) this argument is presented by Mr. Bayard, but he (p. 269) makes the very proper remark as to such an argument that he was "unwilling to place any confidence upon an argument derived from mere verbal criticism. In construing the charter of a government, our views should comprehend all its parts, and our aim should be to execute it according to its general and true design." No method of attaining the sense of the Constitution is more unsafe than this one of "sticking" in sharp verbal criticism. But a little consideration of this matter will show that "officers of" and "officers under" the United States are (as said by Mr. Dallas, in this Blount case, p. 277) "indiscriminately used in the Constitution." Take that clause as to who may be impeached. The Constitution says that "the President, Vice-President, and all civil officers *of* the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." Now, then, if officers of the United States do not include officers *under* the United States, (that is, officers appointed by the President, such as judges, &c.,) then you cannot impeach anybody except the President, Vice-President, and, perhaps, the members of Congress, if the latter are to be deemed officers *of* the government. Again: the judgment of impeachment disqualifies the convict from holding "any office of trust or profit *under* the United States," and not from holding the offices *of* the United States. You can only impeach them who are officers *of* the United States, and then, when impeached, they are only prohibited from holding offices *under* the United States—that is, they can hold the same offices from which they were excluded by impeachment, but cannot hold the inferior executive offices under those from which the impeachment does not perpetually exclude them.

Again: the Constitution provides that "the President shall appoint all officers *of* the United States." Are not the judges, ministers, heads of departments, postmasters, &c., officers *under* the United States? If so, they are also officers *of* the United States, because the Constitution only authorizes him to appoint officers *of* the United States.

It is irresistibly evident that no argument can be based on the different sense of the words "*of*" and "*under*," as used in these clauses of the Constitution, and we must approach this question as to whether a member of Congress is an officer "under" the United States, with the knowledge that if we find him to be *either* an officer "of" the United States, or one "under" the government of the United States, in either case he has been brought within the *constitutional* meaning of these words, as used in the act of 1852, because they are made by the Constitution equivalent and interchangeable.

All we have to do, therefore, is to find out whether the Constitution *anywhere* (not *everywhere*) uses these expressions "officers of" or "officers under the United States" in such sense as must include members of Congress. If the Constitution *once* so uses either of these equivalent expressions, then all argument as to the sense of these words in the act of 1852, so far as that argument is derived from their meaning in the Constitution, is destroyed, because if the Constitution *once* uses these words in a sense which includes members of Congress, then so may the act of 1852 so use them.

Now, let us see whether there is any clause where one or other of these phrases "officers of" or "officers under the government of the United States" must include members of Congress.

Take the clause above cited as to receiving presents, &c., from any king, &c. There the prohibition is that "no person holding any office of profit or trust *under* the United States shall," &c. Now, will it do to hold that a clerk in the

post office shall not be permitted to receive offices, &c., from a king, &c., without the assent of Congress, and yet every member of the Senate or of the House be permitted to be "plied," in the interests of a foreign government, with bribes, in the shape of presents, offices, emoluments, and titles? May the King of England make the American Senate a British House of Lords? He may, unless the position of a senator and representative is an "officer *under* the United States," because there is no other clause prohibiting such bestowals! Again: take the clause containing the requirement that no religious test shall ever be required as a qualification to any office or public trust *under* the United States. Now, shall it be held that a member of Congress may be required to have some religion, or a particular religion, by the establishment of a religious test as to his office, and yet all the other offices of the government be kept open to the infidels? And yet this is the law of the government, unless a member of Congress be one holding an office or public trust under the United States; for there is no other prohibition than this one upon requiring such religious tests.

Or take the clause, already cited, as to the effect of judgments of impeachment. If a member of Congress does not hold any office of trust or profit under the United States, then his is an office into which one may immediately and freely enter who has, by impeachment, just been convicted of treason, bribery, or other high crime. This is because that the only places into which an impeached felon cannot enter are "offices of honor, trust, or profit *under* the United States." The convicted traitor may not enter the office of "deputy United States assessor of internal revenue," but he may become United States senator!

We might increase these examples, but surely it is not necessary. Surely it cannot be that the Constitution contains elements so repugnant to all just or safe principles of government.

But we are referred to authorities to establish this proposition that a member of Congress is not an officer "of" or "under" the United States; and the leading case relied on is the impeachment of William Blount, a United States senator from Tennessee. The case is found fully reported in Wharton's State Trials, 250. Justice Story (1 Const., section 793) says this case decides that a United States senator is not a civil officer of the United States. This remark of the learned author is obviously an incautious one, and not fully authorized by what occurred in that case. The same author in the same section expressly declares that the "reasoning by which the decision was sustained does not appear, the deliberations having been private." He adds that "it was *probably* held that civil officers of the United States" meant such as derived their appointment from and under the national government," &c. The defences of Mr. Blount (see page 260) were various. His main ones were: first. That the offences charged were cognizable in the civil courts and not on impeachment, they not relating to his official duties. Second. That he had been expelled from the Senate before the trial of the impeachment, and that he was *therefore* not an officer of the United States and not amenable to the Senate.

As to what this case does decide, Wharton (page 317) justly says: "In a legal point of view, all that this case decides is, that a senator of the United States *who has been expelled* from his seat is not, *after such expulsion*, subject to impeachment; and *perhaps* from this the broader proposition may be drawn that none are liable to impeachment except officers of the government in the technical sense, excluding thereby members of the national legislature."

Judge Story further says of this decision that it was one on "which the Senate was greatly divided," (14 to 11,) and which "seems not to have been quite satisfactory to the minds of some learned commentators." (4 Tuck. Black. Com. App., 57, 58; Rawle on Const., ch. 22, pp. 213, 214, 218, 219.)

Without, therefore, designing to determine that the case of Blount did not decide that a member of Congress was not a civil officer of the United States "in some technical sense," the committee are wholly unable to come to the conclu-

sion that the members of the national Congress are not, in the enlarged and general sense of the Constitution, officers of their government. The committee do not believe that any authority is to be found holding that they are not. It by no means follows, because a member of Congress may not be tried by impeachment, that he is not a "civil officer of the United States" in the sense we now consider. There are other clauses and principles of the Constitution which affect the question of the right to impeach a senator, besides that single one as to who are included in the just sense of the words "civil officers of the United States." Such is that one providing a method for the expulsion of members; also those as to the separate and independent action of the two houses touching their own members, &c. These and like considerations may well be held to control and qualify the words of the clause of the Constitution as to who may be impeached. No one can read the singularly able and exhaustive argument in the case of Blount and not realize that the other principles and terms of the Constitution ought to and did control the sense of the words "all civil officers of the United States," as used in this clause. The committee decline to find that an acting member of Congress is not an officer of this government within the sense of at least *some* of the clauses of the Constitution. The committee here leave this important question made in this case. The effort of the committee, so far as this single point is concerned, has been to bring to the attention of the House the leading considerations which must form the basis of its determination by the House, should its determination be found necessary. In the opinion of the committee, the determination of this point is not necessary to the right determination of all that is before the committee, and this is not, perhaps, a proper case in which to make a precedent upon so vital a constitutional question.

ACT OF 1852 INCLUDES ACTING MEMBERS IN THE WORD "OFFICE."

But suppose it be granted that the *constitutional* sense of the words "officer of the United States," or "office under the United States," be what is insisted by Mr. Conkling, does it follow that they are used in so limited a sense in the act of 1852? Having regard to the mischief meant to be prevented by it, the committee have been wholly unable to find adequate reasons why a member of Congress who has taken his seat should not be deemed an officer "of" or "under" the government in such sense as that he should not be permitted to draw the salaries of two offices at the same time, though holding but one. To hold that a member of Congress is as free as other men from human infirmities, and as little liable to fall into temptation, is, probably, according to him, as high a grade of virtue as would be accorded to him either by the truth or by the judgment of his fellow men. But if you look to the nature and powers of his office, and the absolutely vital importance of having him removed as far as possible from the bad influences of corruption and avarice, such as he would be liable to encounter, could he become entitled to the pay of many offices at the same time, the propriety of holding that this act of 1852 meant to preclude members of Congress from receiving double salaries becomes quite irresistible. We therefore conclude that whatever may be the meaning of the words "office under the United States," as used in the Constitution, they, in the act of 1852, ought to be held to, and do, preclude an *acting* member of Congress from receiving compensation for the duties of any other office.

WAS MR. CONKLING, AS ACTING JUDGE ADVOCATE, AN OFFICER?

We are now brought to the question whether Mr. Conkling, in what occurred in this prosecution of Haddock, became an officer of the United States. That he did not we think is most readily ascertained. An office is a particular duty, charge, or trust, *conferred by public authority*, and for a public purpose, with a

right usually attached to receive a fixed compensation for such service. Nothing can be plainer than that no office of this government can be created or conferred except by some public authority authorized by law to confer it. Upon this very question Chief Justice Marshall, in the case of Maurice (2 Brock., 101,) says: "It is too clear, I think, for controversy, that appointments to office can be made by heads of departments in those cases only which Congress has authorized by law; and I know of no law which authorizes the Secretary of War to make this appointment." And in that case it was decided that Maurice did not become an officer, and that his contract with the government, on which the suit was brought, was good only by reason of the fact that the United States is a government, and as such can, at common law, make a valid contract with its agents as to matters of government.

The Constitution (art. 2, sec. 2, clause 2) provides that "the President shall nominate, and, by and with the advice and consent of the Senate, shall appoint" * * "all officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments." This clause covers every possible office under or in the government. Aside from the President, Vice-President, and members of Congress (these being the offices included under the above words, "appointment herein provided for,") there are but three repositories in which *can* be placed the power to bestow any office, to wit: the President (the Senate assenting,) the courts of law, and the heads of departments. There was, in April, 1865, no law giving to any court or any head of any department any power whatever to confer upon any person any office of general or special judge advocate, as *an officer* of the government.

The 6th section of the act of July 17, 1862, (2 Brightly, 25,) authorizing the President, with the assent of the Senate, to appoint a judge advocate, with rank and pay of a major of cavalry for each army; and the 6th section of the act of June 20, 1864, (2 Brightly, 26,) authorizing the President, with assent of Senate, to appoint a judge advocate general, with rank of brigadier general, and an assistant, with rank of colonel of cavalry, are the only laws then in force, so far as the committee find, permitting the appointment of any judge advocate as such. Counsel in their briefs have treated the 49th section of the articles of war of April 10, 1806, (1 Brightly, 79,) as being also in force, which the committee assume, on their authority, it was. This last permitted the *judge advocate* or the *general or officer commanding the army, detachment, or garrison to "depute some person to prosecute in the name of the United States"* military offences. If there are any other laws bearing upon these appointments, they have escaped the attention of the committee. The same section last named provides that "the judge advocate, or person officiating as such," shall take a certain oath to keep secret the doings of the court. (1 Brightly, 86.) The 25th section of the act of 3d March, 1863, (2 Brightly, 26,) authorizes the judge advocate to issue process for witnesses. This oath and these duties Mr. Conkling took and performed in the Haddock trial. He had no other appointment or commission than that shown by the letters of April 3 by Mr. Dana, set forth in the letter of General Fry to Mr. Blaine. He was not required to, nor did he take the usual oath of all officers of the United States, nor did he take the oath required by the act of July 2, 1862. (2 Brightly, 348.) Without taking that oath he could not enter upon or take compensation for the duties of any office whatever, except the office of President. There is no law anywhere authorizing Mr. Stanton to appoint any one to the office of judge advocate. In the letter of Mr. Dana above quoted, it was said that "The Judge Advocate General will be instructed to issue to you an appointment as special judge advocate for the prosecution of any cases that may be brought to trial before a military tribunal." But even this was not done. Under this state of law and fact the committee do not think that Mr. Conkling

either did or could become an "officer" of the United States. Under these laws a judge advocate, or a general or officer, might, under the Constitution "depute" Mr. Conkling as *agent*, but could not give him an *office*, because the Constitution does not permit these men to be authorized to appoint to *office*.

"DUTIES OF ANY OTHER OFFICE."

The only remaining question is, whether his being paid \$3,000 for five months' service, from April 3, 1865, was such a compensation for "discharging the duties of any other office," as to require Mr. Conkling, in justice or legal propriety, to either pay back what he has received for those services, or else not to draw his salary as a member of Congress for that time.

The committee submit to the House the following propositions as conclusions at which they have arrived as to this point:

1. When a member elect of Congress has drawn the salary or pay for any other office, for any time after the 4th of March preceding his entering upon his duties as a member of Congress, he should not receive any compensation as a member of Congress for that same time.

2. The act of 31st August, 1852, (1 Brightly, 821,) which is relied on as prohibiting Mr. Conkling from receiving the \$3,000, does not apply to "duties" or services for which there was no officer provided by law whose duty it was to discharge them, and which duties were, in their nature and in law, such that "some other person" than an officer might legally discharge them.

3. The duties discharged by Mr. Conkling were duties for the doing of which the law had not provided, nor paid any other officer, and charged such officer, as part of *his* official duty at that time and place, to enter upon and do. But, on the other hand, they are services which, in their nature and under existing law, (1 Brightly, 79 and 80,) some other person than a judge advocate could do. The law expressly permitted some person not a judge advocate, and "detailed by him," and "officiating as such," to discharge them.

4. The law, or military regulations in pursuance of law, may confer upon private individuals, not officers, powers similar to those usually exercised by officers, such as that of issuing subpoenas, swearing witnesses, &c. Such is common in regulations touching elections, special commissions, the duties in some of the States of attorneys, of grand jurors, and the like. These conferments of such temporary or limited powers do not, in the sense of the Constitution and laws of the United States, *necessarily* constitute the recipients of them "officers," nor make their duties those of "any office."

5. Mr. Conkling's services in the Haddock trial were not "the duties of any other office," within the meaning of the act of 1852, and he was entitled to compensation therefor, the same as for any private service rendered by him in his profession. His having, therefore, received this money as the ordinary earnings of his profession, its receipt no more requires him to decline to draw his salary for that time than the collection of any of his other earnings during that time requires it.

THE ANIMUS OF THE BLAINE LETTER.

In the month of February, A. D. 1865, General Fry entered into an arrangement with Colonel L. C. Baker, chief of the United States detective force, and the firm of Allen, Riley & Hughes, then notorious bounty brokers in the city of New York, having for its object the arrest of bounty-jumpers and deserters who then, as was supposed, infested the vicinity of that city. The arrangement was first made between Colonel Baker and Allen, Riley & Hughes, in the city of New York, but subsequently the plan was communicated to General Fry, and by him approved.

The plan was as follows :

Lieutenant Colonel Ilges, of the 14th United States infantry, was to be detailed, with orders to open an enrolling and enlisting office at Hoboken, New Jersey. Facilities were to be given all the known bounty-jumpers and deserters in the vicinity to enlist and desert with impunity until the facility for such desertion should become known to all other bounty-jumpers in the neighborhood, which was supposed to be a sufficient inducement to secure, upon a day fixed, the enrolment and enlistment of a large number, who were to be arrested by a detachment of United States soldiers to be detailed for that purpose.

By a general order of the War Department at that time the head of each board of enrolment was required to detain and hold in his hands the local bounty allowed to each recruit, which, at this point, was three hundred dollars. The object of this was to secure the arrival of the recruit at the point of rendezvous, at which time the money was to be paid to the recruit. Messrs, Allen, Riley & Hughes were to provide all the cash necessary for this purpose. In consideration of such advancements, and the effect the enterprise might have upon the subsequent business of Allen, Riley & Hughes, all bounty-jumpers and deserters enlisted were credited regularly upon the books of the office, certificates of regular enlistments were made and signed by the proper officer of the board, and the same delivered to said Allen, Riley & Hughes, who were allowed to sell them to persons desiring substitutes, or to the authorities of towns, cities, or counties in the vicinity; and when such certificates were thus sold, such person or corporation were accredited therewith as though such enlistment had been made in good faith.

On the first day of March, 1865, in pursuance of the foregoing arrangements, Colonel Ilges opened an office at Hoboken, and commenced taking recruits. On the fourth of the same month he received, through Captain H. J. Mills, the following instructions :

“ WASHINGTON, D. C., *March 4, 1865.*

“ Until otherwise ordered, you are directed to allow credits for such men as Lieutenant Colonel Ilges, captain 14th United States infantry, certifies to you as enlisted by him. He is recruiting at Hoboken. Inform Colonel Ilges of this order. This command is *special* and *confidential*.

“ JAMES B. FRY,

“ *Provost Marshal General.*

“ Captain H. J. MILLS,

“ *Provost Marshal Fifth District New Jersey.*”

Between the first and ninth days of March Colonel Ilges received and mustered in fifty-four recruits. Of these, only three were enlisted with the understanding that they were ever to enter the service. The remaining fifty one were enlisted with the knowledge that they were notorious “bounty-jumpers,” and as soon as enlisted suffered to escape by passing out of a back room in the office. Certificates, regular in form, were, from to time, issued by Colonel Ilges, on account of such enlistments and muster, and delivered to Allen, Riley, and Hughes, and by them sold to the authorities of Jersey City, which city received credit for the same.

On the 10th of March arrangements were made, in pursuance of the original plan, to arrest as bounty-jumpers all who might apply for enlistment or who might enlist at that office on that day. It was expected that a large number—at least one thousand—might be thus secured. But the plot was discovered by the bounty-jumpers in time to prevent its consummation to the extent anticipated, and only one hundred and eighty-three persons were thus arrested and secured. Upon these enlistments being made, Colonel Ilges, in pursuance of said orders from General Fry, issued certificates of their regular enlistments, de-

livered the same to Allen, Riley, and Hughes, which they sold to the authorities of Jersey City, to be credited upon its quota. For these certificates of credit or enlistment the authorities of Jersey City paid Allen, Riley, and Hughes \$126,000. Of this sum, however, Colonel Ilges required, in conformity to the aforesaid "general order," the sum of \$300 of the bounty money of each recruit to be deposited with him. In the cases of three out of the 183 so-called bounty-jumpers this was neglected. As respects all the others it was complied with, so as to leave from this source in the hands of Colonel Ilges the sum of \$54,000. This money was at once deposited by Colonel Ilges in the Broadway National Bank, to await, as he says, the further order of the Provost Marshal General.

The money was immediately claimed by Messrs. Allen, Riley, and Hughes, under an alleged contract with General Fry. Colonel Ilges, however, did not assent to their claim. But in view of the fact that the men enlisted were then known to have been incarcerated at Fort Lafayette, and that no steps were likely to be taken to prove them deserters, Colonel Ilges claimed that if the men were held for service without being convicted of any desertion it should then go to them; but if the men were proved to be deserters the United States treasury should receive the money, or, in case the credits should be disallowed, that the money ought to be refunded to the local authorities, who had paid it in good faith, and who would otherwise be defrauded by the act of the government itself.

Colonel Ilges states that on his application to Messrs. Allen, Riley, and Hughes to pay the balance of the \$900 which they had failed to deposit, they told him it was unnecessary to do so, as the whole amount in his hands (\$54,000) would be paid back to them within a few days by order of the Provost Marshal General.

On the 18th of March, 1865, while the payment of the fifty-four thousand dollars was suspended, and the question as to who was entitled to receive it was pending, Theodore Allen, of the firm of Allen, Riley & Hughes, had an interview with General Fry, at the office of the latter, in the city of Washington.

The account which Allen gives of the conversation which transpired at that interview, which your committee prefer to incorporate in the words of the witness, is as follows :

"I sent in my card into the War Department. I first saw the messenger, who told me that General Fry could not be seen, as it was past the hour for receiving anybody. I told him it was very important that I should see General Fry, and if General Fry knew I was there he would see me. He took my card. I then saw General Fry and told him I had come in response to a letter or telegram from him to Colonel Baker, requesting me to come to Washington and call upon him.

"Question. What did General Fry answer to that? Answer. He said 'yes;' that he had telegraphed to Colonel Baker that he wished to see me; that he understood we had not been quite as successful in the Hoboken raid as we had expected. He then asked what had become of the money that had been received. I told him that I had it all, or the firm had it, with the exception of \$54,000 that Colonel Ilges had retained. He asked if Colonel Baker had ever asked me for any part of that money. I told him no, he had not, and that Colonel Ilges held \$54,000 of that money, and that I considered I was entitled to it through the agreement between General Fry, myself, and Colonel Baker, and that Colonel Ilges held it and would not pay it over till he was ordered to do so by General Fry, on the ground that the general order would not allow him to do so, unless General Fry ordered him to do so. He then said 'that is all well; we shall see about it.' Said he, the matter I wanted to see you most about was with reference to recruiting affairs at Utica. I told him I was acquainted with a party named Burke and another named Richardson, who were doing recruiting business at Utica, and thought I could get all the information possible. He said he thought

so too, and that he thought I was just the person to get all the information, and for that reason he had sent for me, because he would not trust any of Colonel Baker's officers. He said there appeared to be in Utica enormous frauds in the provost marshal's department as it was conducted by Captain Crandall, and that he wanted to get at these frauds; that he had tried and had not been successful, and that he wished me to go to Utica. I told him I thought from what I had known of recruiting in Utica, and from what I had heard, that if he had found out any frauds in Utica I did not think they would implicate Captain Crandall, but would point more directly to Major Haddock. He said he did not want any evidence against Major Haddock, but against Captain Crandall, and he also wanted evidence that would implicate Mr. Conkling in the frauds, because he had set himself in opposition to him (General Fry) as the champion for Captain Crandall, and that he wished me to proceed immediately to Utica and get that evidence. He said he wished me to go to Utica and get evidence that would implicate Mr. Conkling in the frauds with Captain Crandall, at all hazards; and while I was gone that he would order this money that Colonel Ilges held to be paid over to me. I told him it was better that it be paid to Riley, as he was the treasurer. He said the order should be made. That closed the conversation. I then left and went back to New York."

On the 18th of March the following telegram was sent by General Fry to Colonel Baker:

"WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,
"Washington, D. C., March 18, 1865.

"Allen is here, and tells me he can provide information about the Utica district. I have told him to do so. He starts back to New York to-night, and will see you. Produce all the facts in that case.

"JAMES B. FRY.
"Provost Marshal General.

"Colonel L. C. BAKER,
"No. 12 Vesey street, New York."

Colonel Ilges states that, having deposited the \$54,000 in the bank on the 15th of March, he proceeded, on the 17th of March, to Washington city, and, in person, related to Provost Marshal General Fry all the details connected with the office at Hoboken, the capture of the 183 so-called bounty-jumpers, and the amount of money in his hands, asking, at the same time, for instructions in regard to the disposal of the money. To which General Fry replied that further orders would be sent by mail; that he (Colonel Ilges) then expressed to General Fry his fear that, at some future day he might be called upon for explanations why he had, at his office at Hoboken, acted contrary to existing orders and regulations governing the mustering service, and that he intended to ask for a court of inquiry, when Provost Marshal General Fry assured him that he had done his duty well, and only obeyed orders.

On the 19th of March he received the following despatch:

"WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S OFFICE,
"Washington, D. C., March 19, 1865.

"COLONEL: I am directed by the Provost Marshal General to inform you that the credits of the men mustered by you March 11, 1865, at Hoboken, New Jersey, and credited to Jersey City at large, are disallowed, and that you will refund the money to the parties who advanced it.

"I am, colonel, very respectfully, your obedient servant,

"W. OWENS,

"Captain 6th United States Cavalry, A. A. A. G.

"Brevet Lieut. Col. GUIDO ILGES, U. S. A.,

"Mustering Officer, Hoboken, New Jersey"

On the 21st of March the following communication was sent by Colonel Ilges to the Provost Marshal General:

“ RECRUITING SERVICE 14TH INFANTRY,
“ 163 *Hester street, New York city, March 21, 1865.*

“ CAPTAIN: I have the honor to acknowledge the receipt of your communication of March 19, 1865, informing me that the credits of men mustered by me March 11, 1865, at Hoboken, New Jersey, and credited to Jersey City at large, are disallowed, and instructing me to refund this money to the parties who advanced it.

“ I beg leave to state that no men were mustered by me on the aforesaid date, but I infer that this communication meant to say the 10th instead of the 11th of March, 1863.

“ I would respectfully state that on the said day four regulars were mustered by me, and that if their credits are not to be effected they should be excluded in the order. I mustered on the 10th day of March one hundred and eighty-three volunteers for three years' so-called bounty-jumpers, and they were credited to Jersey City at large, with the exception of fifteen recruits that were credited to Clinton township, Essex county, fourth congressional district, New Jersey.

“ I would further state that I have at my disposal \$300 local bounty for each of these one hundred and eighty-three recruits, *and that I received this amount from Allen, Riley & Co., who had contracted with the counties for these credits*; and I would, therefore, respectfully request that you inform me *whether or not I am to refund this money to these parties, or to the proper representatives of the classes who received the credits.*

“ These one hundred and eighty-three recruits were properly mustered into the service by me, and I credited them according to instructions and orders regulating the mustering service. None of these recruits have as yet been proven to have been credited before; and when I gave these credits I did so as a United States officer, believing that I was doing my duty, and advancing the interests of the plan of Colonel Baker, sanctioned by the Provost Marshal General. I am informed that the county representatives who received these credits paid a large amount of premiums to Messrs. Allen, Riley & Co., besides the \$300 local bounty; and as they have done so after having been informed by me of the correctness of these credits, I would respectfully call your attention to the fact that when these credits are disallowed the said localities will lose a large amount of money paid out by them in good faith. I am not aware what amount of money was paid to Messrs. Allen, Riley & Co. for each recruit, and cannot even give a probable guess, as I only collected the usual amount from them—\$300 for each recruit, this being the amount of bounty paid to a recruit enlisted at Hoboken, New Jersey.

“ I would here add that Messrs. Allen, Riley & Co. are the parties who carried out the plan above referred to, and I only allowed them to be present in my office, and to contract for these credits contrary to existing orders, after I had been assured by Colonel L. C. Baker, special agent of the War Department, that the whole proceeding was sanctioned by the Provost Marshal General United States army.

“ I therefore respectfully request that you inform me, at your earliest convenience, what disposition I am to make of the money referred to.

“ I remain, captain, very respectfully, your obedient servant,

“ GUIDO ILGES,

“ *Capt. 14th Infantry, Brevet Lieut. Col. Vols., Recruiting Officer.*

“ Captain W. OWENS,

“ *5th U. S. Cavalry, A. A. A. G., Washington, D. C.*”

In reply to this letter of the 21st, Colonel Ilges received on the 24th of the same month the following reply:

"WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,

"*Washington, D. C., March 23, 1865.*

"COLONEL: I have the honor to acknowledge the receipt of your communication of the 21st instant, and, in reply, would state that the communication of the 19th instant, referred to, was intended to cover the cases of the 183 so-called bounty-jumpers, and that the amount which you received for the purpose of paying bounties to these 183 so-called bounty-jumpers the Provost Marshal directs to be refunded *to the parties who advanced it.*

"I am, colonel, very respectfully, your obedient servant,

"W. OWENS,

"*Captain 5th U. S. Cavalry, A. A. A. G.*

"Brevet Lieut. Colonel GUIDO ILGES,

"*United States Army, Hester street, New York.*"

The suspicions of Allen, as he alleges, had been somewhat excited by the course of General Fry in the transaction between them, and he resolved, if possible, as he says, to circumvent him, and accordingly he communicated the result of his interview with General Fry to various parties at New York, and resolved not to go to Utica, but to wait at New York a sufficient time to induce in General Fry's mind a belief that he had in fact complied with his agreement, and then sent to him the following despatch:

"No. 51.]

AMERICAN TELEGRAPH COMPANY,

"*March 24, 1865.*

"Brigadier General FRY,

"*Provost Marshal General, Washington, D. C.:*

"I have just returned from Utica, and Colonel Ilges refuses to deliver the money received from me because your order is dated the 11th instead of 10th of March. Please answer through Colonel Baker.

"THEO. ALLEN.

"Please write your address under your signature."

On the same day the following telegram was sent by General Fry to Colonel Baker:

[Original by telegraph.]

"WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,

"*Washington, D. C., March 24, 1865.*

"Colonel L. C. BAKER, No. 12 Vesey street, New York city:

"I have been informed by Theo. Allen, of New York, that Colonel Ilges declines to turn over the money received from the bounty-jumpers on the 11th instant. I wish you to see Colonel Ilges and have him turn over this money as directed.

"JAMES B. FRY,

"*Provost Marshal General.*"

On the 24th of March Messrs. Allen, Riley and Hughes, in company with a Mr. Stanley, called upon Colonel Ilges, demanded of him the \$54,000, and upon his refusing to give up the money to them until he could see Colonel L. C. Baker and ask his advice in the matter, they threatened immediate legal proceedings to compel the delivery of the money. Colonel Ilges then called upon Colonel Baker at his office, but being unable to see him at that time, he proceeded to the office of the United States district attorney, D. L. Smith, esq., No. 12 Chambers street, and laid the case before one of the attorneys in his office, who advised him not to give up the money until he had further orders from Washington. He also consulted with several officers of the regular army then in the city, and was by them advised to the same effect.

On the 25th of March, 1861, Colonel Ilges was again sent for by Colonel L. C. Baker, and upon his arrival at Colonel Baker's office a telegraphic despatch was shown him by Colonel Baker from the Provost Marshal General, directing him to order Colonel Ilges to turn over the amount of money (\$54,000) held by him as bounty for the 183 so-called bounty-jumpers to Messrs. Allen, Riley, & Co. After some hesitation Colonel Ilges then proceeded to the National Broadway Bank, accompanied by Messrs. Allen, Riley, Hughes and Stanley, and there drew the following check :

"No. 24.

NEW YORK, *March 25, 1865.*

"*National Broadway Bank, pay to Messrs. Peter Riley & Co, or bearer, fifty-four thousand dollars.*

"\$54,000.

"GUIDO ILGES,

"*Capt. 14th U. S. Inf., Bvt. Lt. Col. U. S. A., Recruiting Officer.*"

This check was then handed to Peter Riley in the presence of the others, and he presented it to the paying teller of the said bank, and received the \$54,000 in payment of the same.

On the 25th of March General Fry sent the following despatch to Colonel Baker:

"PROVOST MARSHAL GENERAL'S BUREAU,

"*Washington, D. C., March 25, 1865.*

"Colonel L. C. BAKER, *New York:*

"You must prepare all the facts in the case of the Utica district, without reference to Major Luddington's report. It is absolutely necessary for me to have them, whether Major Luddington has been able to obtain them or not. See Allen and let him make it his business to straighten this matter out.

"JAMES B. FRY,

"*Provost Marshal General.*"

It was charged against General Fry, by Mr. Conkling, that the motives of the former in his action in regard to the Utica district were to be found in his relations with Major John A. Haddock, who was engaged in fraudulent practices at Elmira, from which it suited the policy of General Fry to divert public attention by the prosecution of the alleged frauds at Utica. It appeared from the evidence before your committee that, some time prior to the transactions at Hoboken referred to, Major John A. Haddock, acting assistant provost marshal for the western district of New York, had been suspected of the most flagrant and corrupt violations of official duty. Detailed reports of specific acts of official dishonesty committed by him had been made to General Fry in writing on several occasions. One by Edward Meloy, dated February 3, 1865, and another by Peter A. La France, dated February 28, 1865. Two of the alleged accomplices of Haddock in the fraudulent practices reported, named Webell and Dalton, were arrested and afterwards sent to the penitentiary. Haddock himself, however, was not then arrested nor relieved from duty. But on the 15th day of March, 1865, Colonel L. C. Baker telegraphed to Provost Marshal General Fry to the effect that he had discovered most astounding enlistment frauds at Elmira, with which Major Haddock was connected. Soon afterwards Major Haddock was arrested by order of the Secretary of War, a court-martial was convened in his case, and Hon. Roscoe Conkling authorized by the War Department to represent the government at his trial.

If there be any circumstances in the testimony which are susceptible of further explanation, either by General Fry or Colonel Baker, (to both of whom many of the statements relate,) your committee have not had the benefit of their knowledge, as neither appeared as a witness in the case. As your committee have already explained, their investigation of the matters with which they have

been charged by the order of the House has thus far been confined to that branch of the case relating to the charges made by General Fry against the honorable Roscoe Conkling, leaving the other branch of the case relating to the charges made by the honorable Roscoe Conkling against the Provost Marshal General untouched. Whatever evidence there may be contained in the report of your committee which may raise a question touching the management of the Provost Marshal General's bureau has been admitted solely on account of its supposed relation to the motives of General Fry in the publication of his charges against Mr. Conkling, as has already been explained. So far, therefore, as the committee have deemed it pertinent for that purpose, they have heard and considered it, and for no other. It would be premature and might work injustice if your committee at this stage of their investigation were to pronounce affirmatively in advance upon a branch of the case only collaterally introduced, and still further to be heard and considered. Your committee therefore refrain altogether from expressing their judgment upon the guilt or innocence of General Fry on the charge of the alleged corrupt bargain with Allen and his connexion with the Hoboken enlistments.

They refrain also from any expression of their opinion as to the credit to be attached to the testimony of Theodore Allen, (a witness sought to be impeached by the party against whom he was called;) nor does your committee undertake to say at this time how far the testimony of the said Allen is corroborated and sustained by the other testimony in the case. So far, however, as any of the evidence before your committee bears upon the point for the illustration of which it was admitted they have not failed fully to consider it. Whatever relative weight has been attached by your committee to the various testimony in the cause which brought them to their conclusion in reference to the motives of General Fry in writing the Blaine letter, it cannot be important at this time to announce, since their conclusion on that point is not equivocal, and is the unanimous judgment of the committee.

The following copies of what purport to be two letters—one by Colonel L. C. Baker, and the other by General Fry—appear in a printed argument by Hon. A. G. Riddle, which has been laid upon the tables of the members of this house :

“ OFFICE SPECIAL AGENCY WAR DEPARTMENT,

“ *New York, March 16, 1865.*

“ SIR : Since the capture of the bounty-jumpers at Hoboken, repeated applications have been made to me to have said jumpers credited to the State of New Jersey. Colonel Ilges, the mustering officer, applied to me, before going to Washington last week, to make application to you to have said jumpers so credited. I informed him that I did not think these men could or would be credited, advising him (Colonel Ilges) to apply to you for the required instructions or permission.

“ On Tuesday last, while in Washington, and after my conversation with you on the subject referred to above, I received a telegram from Colonel Ilges, requesting me to obtain permission to make these credits. This telegram I made no reply to. On my return to New York yesterday morning I heard that Colonel Ilges had made the credits. I sent for him and asked him by whose order or direction he had done so. He referred me to your telegram of March 5, addressed to Captain H. J. Mills, provost marshal at Newark, New Jersey, for his authority. I informed him (Colonel Ilges) that I did not think that you intended, by the telegram referred to, to convey any order or authority to Captain Mills to credit bounty-jumpers and deserters; that your telegram was intended to only authorize the crediting of such men as were regularly and legitimately enlisted previous to the Friday on which it was understood that none but jumpers and deserters were to be enlisted. I have advised Colonel Ilges to

go to Washington to-night, and to make such explanations in reference to this matter as you may require. These explanations I trust will be satisfactory.

"I am, general, very respectfully, yours,

"L. C. BAKER,

"Colonel and Special Agent War Department.

"Brig. Gen. JAMES B. FRY,

"Provost Marshal General U. S., Washington, D. C.

"A true copy :

"GEO. E. SCOTT,

"Brevet Lieutenant Colonel, U. S. Volunteers."

"WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,

"Washington, D. C., March 29, 1865.

"COLONEL: By the course of things in reference to bounty-jumpers taken at Hoboken, Mayor Cleveland, of Newark, is placed in a very unfortunate position. If possible, he should be relieved from it. Under date of March 23 I directed Colonel Ilges to return the money in his possession to the parties who advanced it as bounties for these men, the credits for them being disallowed, and the money still in his possession. It seems that under this order, reported by telegraph to you on the 24th of March, Colonel Ilges has delivered the money in whole or part to Theodore Allen, broker, and perhaps to some other brokers, and that Mayor Cleveland is unable to regain possession of it.

"The proper method of disposing of this business has all the time seemed to me plain enough; it is this: to allow *no* credits for the bounty-jumpers, men who have already been enlisted and credited several times over, but to credit any, if there be any, who are *bona fide* recruits, and not jumpers. To return to the town authorities all the money they advanced on account of men whom we do not credit.

"I intended my order to carry out the above view, but it seems that the money advanced by Newark has been returned to Allen, the broker; perhaps it was turned over to Colonel Ilges, through Allen, and on this account he returns it in the same way. However that may be, Allen should return the money to Newark, and I desire you to see Allen and tell him so. Neither he nor any one else has any right to profit in the matter. All necessary expenses connected with the arrest of these jumpers, and the enlistment of such as are proper recruits, must be paid by the United States, so that there is no loss for individuals in the case.

"Please report to me as soon as practicable on the adjustment of this affair.

"You had better send for Mayor Cleveland also.

"Very respectfully, your obedient servant,

"JAMES B. FRY,

"Provost Marshal General.

"Colonel L. C. BAKER,

"No. 12 Vesey street, New York city.

A true copy :

"GEORGE E. SCOTT,

"Brevet Lieutenant Colonel U. S. Vols."

The opening argument in the summing up before the committee was made orally on behalf of General Fry by Mr. Riddle, and was reported by one of the reporters of the House. To this Mr. Conkling replied. Mr. Riddle rejoined in an oral argument, but which was not reported, and he had leave of the committee to reduce to writing this rejoinder, confining it to the argument actually delivered, this to be reported to the House along with the other arguments in the case.

No member of the committee has any recollection of either of these two letters being either given in evidence in the case, or alluded to in any part of the argument; and no member of the committee has any recollection of ever seeing

the original of either of these letters, and neither of them has yet been furnished to the committee. The first knowledge which any member of the committee had, so far as can be recollected, of either letter, was after writing the foregoing part of this report, and upon seeing the printed argument of Mr. Riddle. The committee understand it to be now claimed by the counsel for Mr. Conkling that these letters were not offered in evidence, nor alluded to in the argument, and doubts are expressed to the committee as to the authenticity of one or both. General Fry's counsel insist that these letters were given in evidence and commented upon. Since the committee's attention has thus been called to them, their effect in the case (treating them as authentic) has been, by your committee, carefully considered, and they do not change any conclusions submitted in this report to which your committee had come before they were seen. These letters never having been in the possession of any member of the committee, the committee cannot, of course, make any decision whatever as to whether these alleged copies are copies of genuine letters of the dates they bear; but the committee submit these alleged copies with this explanation, that the House and all parties may have the benefit of them.

Your committee report to the House the argument of Mr. Riddle, as printed by him, with the above statement, as to its correspondence with the argument made to the committee. They do this because the committee are not willing to deprive General Fry of any fact or argument in his defence which he may desire to bring to the attention of the House to influence its action, although it may not have been submitted to the committee during its deliberations. No injustice, so far as the results of the committee's action is concerned, can be done to Mr. Conkling by this course, as the committee came to no conclusion as to the subject-matter of these letters which is adverse to him.

Your committee have refrained from making any recommendation as to proceedings by the House against General Fry for this breach of its privileges. The reasons for this are in part to be found in the circumstances connected with the introduction of General Fry's letter into this house by one of its members. The committee doubted whether the House would be inclined, or ought to adopt, any further proceedings against General Fry touching this violation of its privileges, except in connexion with the examination of Mr. Blaine's relations to this matter. The latter is wholly outside of the powers of your committee.

Besides, all of the facts, and also the conclusions of law and fact derived therefrom which bear upon the question of the propriety of any further proceedings touching this breach of its privileges, are by your committee here submitted to the House; and hence the House will have no difficulty in deciding what its action should be in this regard, and would not be assisted by any mere opinion or recommendation of the committee upon a question lying so peculiarly within the limits of the discretion of the House, and to be determined by its sense of fitness.

The execution of that part of the order of the House in relation to the charges against General Fry and his bureau will involve an enormous amount of labor and of expense, and can be properly performed only by a committee having a competent clerk and phonographic reporter, and having leave to sit at the places where the witnesses reside, and during the sessions of the House, and also during the recess of Congress. Whether, now that the war is over, the public good to be attained by these investigations will compensate for the large expense they will involve, is a consideration which should receive the attention of the House.

Your committee, having fully and carefully considered the charges against the Hon. Roscoe Conkling contained in the letter of General Fry, are unanimously of opinion that none of the charges in the letter, whether made directly and openly, or indirectly and covertly, have any foundation in truth, and that the conduct of Mr. Conkling in relation to each of the matters investigated by the committee has been above reproach, and that no circumstances sufficient to excite reasonable

suspicion have arisen which could justify or excuse the attack made upon him in the letter of General Fry.

The several charges against the Hon. Roscoe Conkling, contained in the letter of General Fry, being unsupported by the testimony in any one material particular, although ample opportunity was afforded, at the cost of much time and expense, to enable the writer of that letter to furnish his proofs, the committee ought not to refrain from the expression of their condemnation of the deliberate act of a public functionary in traducing the official as well as the personal character of a member of the House of Representatives of the United States by the publication of a libel which he was so illy prepared to sustain. Indignities offered to the character or proceedings of the national legislature by libellous assaults have been resented and punished both in England and the United States as breaches of privilege; and such assaults upon the official character of members have been held punishable as indignities committed against the House itself. The reason for this rests upon the same ground as that which justifies the exercise of similar authority to punish for attempts by personal violence, menaces, or bribes, to influence the conduct of members in their official capacity.

Your committee deem it proper most earnestly to protest against the practice which has obtained, to some extent, of causing letters from persons not members of the House to be read as a part of a personal explanation, in which the motives of members are criticised, their conduct censured, and they are called to answer for words spoken in debate. Such attacks upon members, made in the House itself, and published in its proceedings, and scattered broadcast to the world at the expense of the government, are, in the opinion of your committee, an improper check upon the freedom of debate, a violation of the privileges, and an infraction of the dignity of the House.

Your committee submit, for the consideration of the House, the following resolutions, and recommend their adoption:

Resolved, That all the statements contained in the letter of General James B. Fry to Hon. James G. Blaine, a member of this house, bearing date the 27th of April, A. D. 1866, and which was read in this house on the 30th of April, A. D. 1866, in so far as such statements impute to the Hon. Roscoe Conkling, a member of this house, any criminal, illegal, unpatriotic, or otherwise improper conduct or motives, either as to the matter of his procuring himself to be employed by the government of the United States in the prosecution of military offences in the State of New York, in the management of such prosecutions, in taking compensation therefor, or in any other charge, are wholly without foundation in truth; and for their publication there were, in the judgment of this house, no facts connected with said prosecutions furnishing either a palliation or an excuse.

Resolved, That General Fry, an officer of the government of the United States, and head of one of its military bureaus, in writing and publishing these accusations named in the preceding resolution, and which, owing to the crimes and wrongs which they impute to a member of this body, are of a nature deeply injurious to the official and personal character, influence, and privileges of such member, and their publication originating as in the judgment of the House they did, in no misapprehension of facts, but in the resentment and passion of their author, was guilty of a gross violation of the privileges of such member and of this house, and his conduct in that regard merits and receives its unqualified disapprobation.

SAMUEL SHELLABARGER,

Chairman.

W. WINDOM.

B. M. BOYER.

B. C. COOK.

SAMUEL L. WARNER.

JOURNAL.

WASHINGTON, D. C., *Monday, May 7, 1866.*

The committee convened at the room of the Committee on Indian Affairs.

Present: Mr. Samuel Shellabarger, (chairman;) Mr. William Windom, Mr. Benjamin M. Boyer, Mr. Burton C. Cook, Mr. Samuel L. Warner.

Honorable Roscoe Conkling and honorable Giles W. Hotchkiss, counsel.

Major General James B. Fry and Brigadier General N. L. Jeffries, counsel.

The chairman laid before the committee the following resolution, transmitted from the Clerk of the House of Representatives:

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES, *April 30, 1866.*

On motion of Mr. Hulburd:

Resolved, That a select committee of five members of this house be appointed to investigate the statements and charges made by honorable Roscoe Conkling in his place last week against Provost Marshal General Fry and his bureau; whether any frauds have been perpetrated in his office in connexion with the recruiting service; also to examine into the statements made by General Fry in his communication to Hon. Mr. Blaine, read in the House this day, with power to send for persons and papers.

The Speaker appointed the following named members to constitute said committee:

Mr. Samuel Shellabarger, of Ohio; Mr. William Windom, of Minnesota; Mr. Benjamin M. Boyer, of Pennsylvania; Mr. Burton C. Cook, of Illinois; Mr. Samuel L. Warner, of Connecticut.

Attest:

EDWARD MCPHERSON, *Clerk.*

Ordered, That the committee proceed first to the latter branch of investigation directed by the resolution of the House, viz: "to examine into the statements made by General Fry, in his communication to Hon. Mr. Blaine, read in the House this (April 30) day."

The chairman laid before the committee the letter of General Fry referred to, which is as follows:

WAR DEPARTMENT,
PROVOST MARSHAL GENERAL'S BUREAU,
Washington, April 27, 1866.

SIR: I have to thank you for repelling, as you did, in the House of Representatives, on the 25th instant, the very extraordinary assault upon me by honorable Roscoe Conkling, of New York. It was a defence of me in a forum where I had no opportunity to be personally heard, and I am enabled to say that your assertions touching Mr. Conkling's difficulties with this bureau are amply and completely justified by the facts which this letter will disclose.

My official intercourse with representatives in Congress during the past three years has been constant and in many cases intimate, and, with the solitary exception of Mr. Conkling, it has been marked, so far as I remember, by mutual honor and fair dealing. Mr. Conkling being thus an exception, it is my purpose to give a brief summary of his connexion and intercourse with this bureau.

In the summer of 1863 Mr. Conkling made a case for himself by telegraphing to the War Department that the provost marshal of his district required legal advice, which he was thereupon empowered to give.

In April, 1865, Mr. Charles A. Dana, then Assistant Secretary of War, without notifying me, had Mr. Conkling appointed to investigate all frauds in enlistments in western New York, with the stipulation that he should be commissioned judge advocate for the prosecution of any cases brought to trial, and he was so appointed to prosecute, before a general court-martial, Major J. A. Haddock. Mr. Dana vested him, by several orders issued in the name of the Secretary of War, without the sanction of Mr. Stanton, with the most extraordinary powers. Among these was the right to examine the despatches in all telegraph offices in the western division of New York, which enabled a violation of the sanctity of personal and business correspondence. For his services in this connexion Mr. Conkling received, on the 9th of November last, from the United States, the modest fee of \$3,000. Whether he received, as it has been reported, from his district \$5,000 more for the same service, and whether he received additional fees from guilty parties for opposing proceedings at Utica, I am unable now to say, but, as hereafter shown, he was as zealous in preventing prosecutions at Utica as he was in making them at Elmira; and the main ground of difficulty between Mr. Conkling and myself has been that I wanted exposure at both places, while he wanted concealment at one. I suppose there can be no doubt among high-minded men as to the character of Mr. Conkling's course in this matter. Whether his action in exercising the functions of judge advocate and receiving pay therefor from the United States to the amount of \$3,000 while receiving his compensation as a member of Congress was a violation of the letter or spirit, or both, of article one, section two, of the Constitution, I leave to others to decide.

As to the *animus* of Mr. Conkling's calumnious assault upon me, it is true (notwithstanding his assertion that he had no personal quarrels with me) that the differences between him and myself arose altogether from my unwillingness to gratify him in certain matters in which he had a strong personal interest. It is true, also, that he was foiled in his efforts to obtain undue concessions from my bureau, and to discredit me in the eyes of my superiors.

There have been three main issues between Mr. Conkling and myself.

The first arose in consequence of the removal of Captain Richardson, (the first provost marshal of Mr. Conkling's district,) upon a report of Judge Advocate Turner, that the proofs in his case disclosed a reckless persistence in fraudulent practices. Mr. Conkling complained of my action both to the President and War Department, but failed to procure any modification of my course.

The second issue was as to the restoring of Captain Crandall, (the second provost marshal of the district,) after I had secured his removal from duty on the recommendation of Major Ludington, who thoroughly inspected the district and reported that though not legally guilty, he had morally perpetrated a most glaring and inexcusable fraud on the government he was sworn to serve, and that he had quieted his conscience by casuistry and regulated his actions by the counsel of unscrupulous legal advisers. Mr. Conkling failed to get Captain Crandall restored, and the officer selected by me continued in charge of the business until the office was closed.

The third issue was as to the government employing counsel to defend Captain Crandall after he had been relieved and had carried with him, in violation of the orders of the Department, some twenty thousand dollars, local bounty deposited with him in behalf of recruits, and in regard to which he got into litigation. In this Mr. Conkling failed. Counsel has not, to my knowledge, been authorized, nor have any lawyers been paid by the government in that suit.

In support of his denial of differences with me which influenced his action, Mr. Conkling states the fact that we had but one personal interview. That is true, but it proves the reverse of what Mr. Conkling asserts, for it was of such a nature as to render other interviews very objectionable. I was called to Mr. Dana's office to have a verbal discussion with Mr. Conkling on the questions at issue, but I had by this time learned too much of this gentleman to transact business with him in that way, and I declined to do so. We had, directly and indirectly, much correspondence, and generally of an unpleasant character, and I presume, under such circumstances, it will be granted that men's personal relations will be bad, although they may have had but one personal interview.

Notwithstanding Mr. Conkling's denial in the House, his own letters, as well as the foregoing statements, show that there were differences, and that he was "worsted," on the 25th of October, 1865, he wrote to the Secretary of War, saying: * * * "It is now many months since I have been able to obtain any response from the department touching the interests of the government in this district. Still, I venture one more trial," &c.

Mr. Conkling asserts, and presents it as an offence or crime on my part, that Major Haddock was my crony, confidant, &c., and that I justified him (Haddock) down to the time when his sentence was published and afterward.

These assertions are not true. Major Haddock was never my confidant or crony. Prior to his entry into the Veteran Reserve Corps, I had never heard of him. He was appointed to that corps by a special order from the Secretary of War, without any knowledge or action on my part. He served under General Oakes, in Illinois, by whom he was highly recommended to me.

He then served for a short time in a subordinate position in a branch of my office, without my becoming intimate with him, personally or officially. He has never made a social or personal call on me in his life. He was highly recommended by the officer under whom he served in my office, and was selected for a temporary provost marshalship in Pennsylvania, where he rendered efficient service, without his integrity or capacity being questioned. After serving for a short time with fidelity, so far as I know, as acting provost marshal at Buffalo, he was selected as acting assistant provost marshal general at Elmira, for the reason, and that only, that I thought he was upright and suited to the position. In that position I befriended and sustained him until I had proper evidence of his being unworthy, and not a day longer; but on this point I required better testimony than Hon. Roscoe Conkling. I received a letter dated as late as March 29, 1865, from Hon. Hamilton Ward, member of Congress of the district in which Major Haddock was stationed, claiming to be familiar with Haddock's course, and the motives of the persons operating against him, "and protesting against his removal;" but, notwithstanding this, as soon as the official report against him was received, on the 1st of April, I had him relieved and his conduct put under investigation. He had not then been four months on duty as acting assistant provost marshal general.

After his trial and dismissal Major Haddock came to Washington to get a revocation or modification of his sentence. He pointed out to me instances of unfairness in his trial, but I declined to do anything in aid of his object, as I thought he deserved punishment, not for all the crimes with which Mr. Conkling charged him, but for the offences of which he was really guilty. I even refused to give him a letter as to his behavior prior to his being accused, because I knew that such a letter, though perhaps not wrong in itself, would be used to accomplish a purpose which I did not approve, namely, his pardon.

Major Haddock went on duty at Elmira as acting assistant provost marshal general December 9, 1864.

An inspection made at my request the latter part of March, 1865, elicited the first information which I received suitable for proceeding against him.

I received the report on the 1st of April, and on the same day I submitted it

to the Secretary of War, with the recommendation that Major Haddock be relieved from duty as acting assistant provost marshal general of western New York, and that his conduct be further investigated, which was approved by the Secretary of War, and Major Haddock was promptly relieved.

The prosecution of Major Haddock was on April 3, 1865, made the special business of Mr. Conkling and the Judge Advocate General of the army, as shown by a letter from Mr. Charles A. Dana, Assistant Secretary of War. But whenever I had an opportunity, and so far as I had power, I urged forward the trial of Major Haddock. I was told by Mr. Dana, early in April, that Mr. Conkling would prepare charges, but hearing nothing definite in regard to them I, on the 22d of April, 1865, wrote to Mr. Conkling, asking when he would be ready to proceed with the trial, to which I received a reply saying that he had forwarded the charges to the Secretary of War. This letter I at once (May 1) referred to the Judge Advocate General, with the request that the trial might take place as soon as possible. The court was ordered to convene on the 17th of May, 1865. Notwithstanding Mr. Conkling was directed to get his instructions from General Holt, he frequently applied to me. On the 15th of May I referred a letter from him of the 13th, with the following indorsement: "Respectfully referred to the Judge Advocate General, with the request that he will answer Mr. Conkling's inquiries by telegraph to-day, as the court meets day after to-morrow. Mr. Conkling is judge advocate of the court, and I recommend that all proper authority and facilities be granted to him at once." When the organization of the court was delayed by the absence of members, I secured at once the detail of other officers, and notified Mr. Conkling by telegraph. There are other facts bearing on this point, but the foregoing are, I think, sufficient to show my desire to have Major Haddock tried.

Mr. Conkling, in his speech, insinuates dishonesty, saying this bureau should "allow the War Department and the country to know precisely what has become of the twenty-five million and odd dollars which, under the act of March 3, 1863, went to its credit." My official report, now partly in the hands of the public printer, shows in detail the disposition of every dollar of this money, and shows, moreover, a completeness and accuracy in accounts that is not surpassed, if it is equalled, by any bureau under the government, and I hold a certificate from the Second Comptroller of the Treasury that all my accounts relating to this fund have been examined and found correct. Mr. Conkling speaks of this bureau allowing the War Department to know, &c., as if they were separate branches of the government. My bureau is a subordinate branch of the War Department, and I wish here to point out clearly the fact that my business has been conducted under the constant supervision and direction of the Secretary of War, and those authorized to act in his name. It ought not to be necessary for me to remind either Mr. Conkling or the "people" that Mr. Stanton has never been unwilling to make examinations into the conduct of his subordinates, nor slow to act upon the result of them. This of itself is a sufficient reply to Mr. Conkling's abuse of me, especially as it is a fact that every request, complaint, or accusation of any importance made by him to or affecting this bureau has been laid before the Secretary of War, and passed upon by him. It is true that the result has, in nearly every instance, been unfavorable to Mr. Conkling; and assuming that these were the differences or quarrels which were referred to in the debate as those in which Mr. Conkling came out "second best," he asserted what was not true when he denied them.

Mr. Conkling says that he may hereafter inform Congress what number of all the men who received bounty reached the front, intimating that the proportion was small. I, for one, should be glad to obtain that information. The duty of sending men to the front rested with the Adjutant General of the army, and not with me.

He also hints that he may hereafter make a damaging *exposé* of the operations

of my bureau. Whatever he may adduce in this connexion, he will probably not be able to disprove that it raised more than a million men for the army, which, when hostilities ceased, consisted, notwithstanding all the losses, of one million five hundred and sixteen men; that it arrested and returned to the service over seventy-six thousand deserters, and that it raised by its own operations, in conformity to law, over twenty-six million dollars, which sum has been properly disposed of.

That there were frauds in my branch of the service I admit; but that they prevailed to a greater degree in it than in others, or that earnest and zealous efforts were not made by me to pursue, correct, and punish them, no man dare have the hardihood to assert.

And I will here state that the fraud or loss in government funds under my bureau, including both that punished and that unpunished, has been comparatively small.

The frauds and malpractices which did occur were almost entirely in connexion with local bounties, which could not be controlled by the United States, and which corrupted some of the officers of this bureau, but more of the people at large, including supervisors, agents, &c., selected by the people to disburse the funds which they so lavishly bestowed.

The general management of my business has received the approval of all dispassionate parties who have had an opportunity to judge of it, including the late President and that superior officer to whom I have been directly responsible, whose vigor and whose capacity and opportunity to judge are beyond dispute; and it will not be forgotten that complaints and accusations have been spread with great industry before the high officials last referred to.

I have been at all times amenable to the severest form of law—the military code—liable at any moment to summary arrest, court-martial, and extreme punishment in case of any dereliction of official duty. No one knew or knows this fact better than Mr. Conkling, and if, while acting as judge advocate, under the extraordinary inquisitorial powers bestowed upon him by his friend Mr. Dana, he came into the possession of any fact impugning or impeaching my integrity as a public officer, he was guilty of grave public wrong and unfaithfulness if he did not instantly file formal charges against me with the Secretary of War. He can, therefore, only escape the charge of deliberate and malignant falsehood as a member of Congress, by confessing an unpardonable breach of duty as judge advocate. He held both offices and took pay for both at the same time; he has certainly been false to honor in one, and perhaps, as the sequel may show, in both.

Copies of official documents substantiating statements herein made are subjoined.

I am, sir, very respectfully, your obedient servant,

JAMES B. FRY,
Provost Marshal General.

Hon. JAMES G. BLAINE,
House of Representatives, Washington, D. C.

General Fry, through his counsel, presented certain records and papers, which were received in evidence.

The committee adjourned until to-morrow at 10.30 a. m.

TUESDAY, May 8, 1866.

The committee met pursuant to adjournment.

Further documentary testimony was presented by General Fry, through his counsel, and received in evidence.

The committee adjourned, to meet on call of the chairman.

WASHINGTON, D. C., *May 24, 1866.*

The committee met on call of the chairman.

James A. McQuade and Major W. H. H. Beadle appeared and were examined as witnesses.

The committee adjourned until to-morrow at 10 o'clock a. m.

MAY 25, 1866.

The committee met pursuant to adjournment.

Major W. H. H. Beadle appeared and his examination as a witness was continued.

The committee adjourned until Monday next at 10.30 a. m.

MONDAY, May 28, 1866.

The committee met pursuant to adjournment.

Major W. H. H. Beadle appeared and his examination as a witness was continued and concluded.

The committee adjourned until to-morrow at 10.30 a. m.

TUESDAY, May 29, 1866.

The committee met pursuant to adjournment.

Hon. A. G. Riddle was present as additional counsel on the part of General Fry.

The following persons appeared and were examined as witnesses: Lieutenant James L. Lott, Peter Van Emburg, Peter Clogher, Patrick Kinney.

The committee adjourned until to-morrow at half past 10 o'clock a. m.

WEDNESDAY, May 30, 1866.

The committee met pursuant to adjournment.

Patrick Kinney appeared and was examined as a witness.

The committee adjourned until Friday next at half past 10 o'clock a. m.

FRIDAY, June 1, 1866.

The committee met pursuant to adjournment.

Colonel B. Tracy and Dr. George W. Davis appeared and were examined as witnesses.

The committee adjourned until to-morrow at half past 10 o'clock a. m.

SATURDAY, June 2, 1866.

The committee met pursuant to adjournment.

Ward Hunt and L. H. Babcock appeared and were examined as witnesses.

The committee adjourned until Monday next at 12 o'clock m.

MONDAY, June 4, 1866.

The committee met pursuant to adjournment.

The committee decided that proof may be admitted of such frauds and misdemeanors in the district to which Mr. Conkling's supervision extended as are previously shown must have come to Mr. Conkling's knowledge in the exercise of reasonable diligence in the discharge of the duties which he may be proved to have assumed.

The committee adjourned until Wednesday next at 7 o'clock a. m.

WEDNESDAY, June 6, 1866.

The committee met pursuant to adjournment.

C. A. Dana and Hon. E. M. Stanton appeared and were examined as witnesses.

The committee adjourned until to-morrow at half past 10 o'clock a. m.

THURSDAY, *June 7, 1866.*

The committee met pursuant to adjournment.

Hon. Roscoe Conkling appeared and was examined as a witness.

The committee directed the following rulings to be entered on the journal :

1. In trying the charges against Mr. Conkling, the committee will not go into or determine upon the propriety or motive of General Fry's letter containing these charges, except so far as they are involved in disposing of said charges against Mr. Conkling.

2. The committee will hear any evidence which may be offered, and which is competent, tending to show that Mr. Conkling's conduct, while assuming to discharge the duties of a judge advocate, in 1865, was such as to prevent the prosecution of frauds, and, while under such obligations, was guilty of gross and wilful neglect of duty, in omitting to cause such prosecutions.

Under the above ruling several papers were presented and received in evidence.

The committee adjourned until to-morrow at 10 o'clock a. m.

FRIDAY, *June 8, 1866.*

The committee met pursuant to adjournment.

Hon. Roscoe Conkling appeared, and his examination as a witness was resumed and concluded. Documentary testimony was also presented and received in evidence.

The committee adjourned until to-morrow at 10 o'clock a. m.

SATURDAY, *June 9, 1866.*

The committee met pursuant to adjournment.

Further offers of documentary evidence were made and acted on by the committee.

Theodore Allen appeared and was examined as a witness.

The committee adjourned until Monday next at 10 o'clock a. m.

MONDAY, *June 11, 1866.*

The committee met pursuant to adjournment.

Ellis Roberts appeared and was examined as a witness.

The committee adjourned until to-morrow at 10 o'clock a. m.

TUESDAY, *June 12, 1866.*

The committee met pursuant to adjournment.

The following ruling was made :

The committee will admit into the record, and report to the House, all the papers from the files of the War Department, or from any bureau thereof, which have been given in evidence in the case and which accompanied the letter of General Fry to Mr. Blaine, including the letter of Mr. Crandall to honorable R. Conkling, transmitted to the War Department. The committee will reserve the right hereafter to determine what ones of the other letters and papers offered in evidence they will retain, and direct Mr. Conkling's counsel to assume in the future management of the case that all the papers now admitted in evidence will remain in evidence, and will enter into the record.

The committee will not admit Mr. Conkling to go into evidence of the number of deserters which occurred from those recruited under Mr. Crandall, nor generally into matters as to which no evidence has been offered and admitted against Mr. Conkling, except evidence in regard to the animus of Mr. Blaine.

Theodore Allen appeared, and his examination as a witness was resumed and concluded.

The committee adjourned until to-morrow at 10 o'clock a. m.

WEDNESDAY, *June 13, 1866.*

The committee met pursuant to adjournment.

The following persons appeared and were examined as witnesses :

Edward Mulloy, Nathan G. Axtell, Schuyler Hubbard, Hon. Reverdy Johnson, Hon. Hamilton Ward.

Further offers of documentary evidence were also made and determined.

The committee adjourned until Friday next at 10 o'clock a. m.

FRIDAY, *June 15, 1866.*

The committee met pursuant to adjournment.

M. L. De Coursey appeared and was examined as a witness.

Further offers of documentary evidence were made and determined.

The committee adjourned until Monday next at 10 o'clock a. m.

MONDAY, *June 18, 1866.*

The committee met pursuant to adjournment.

The following persons appeared and were examined as witnesses :

Daniel Carpenter, Captain Jeremiah Petty, Sheridan Shoot, James W. Booth, Lieutenant Colonel Wright Rives, George F. Hotchkiss, Charles Henry Trask.

Further documentary testimony was placed in evidence.

The committee adjourned until to-morrow at 10 o'clock a. m.

TUESDAY, *June 19, 1866.*

The committee met pursuant to adjournment.

The following persons appeared and were examined as witnesses :

William G. Elder, Captain John Jourdan, George W. Dilkes, William Hepburn, Ranson Van Valkenburg, Hon. Henry J. Raymond, Theodore Allen.

Further documentary testimony was also placed in evidence.

The committee adjourned until call of chairman.

MONDAY, *June 26, 1866.*

The committee met on call of the chairman.

Present, all the members.

Hon. A. G. Riddle submitted an argument on behalf of General Fry.

Mr. Conkling read an argument in reply.

Mr. Riddle then submitted the closing argument.

Ordered, That leave be granted to General Fry and to Mr. Conkling to furnish in writing the argument submitted, and that the same be reported to the House with the journal and testimony in the case.

The committee adjourned to meet on call of the chairman.

TESTIMONY.

MONDAY, *May 7, 1866.*

General FRY stated that he proposed to offer in evidence certain letters and papers on file in the War Department, certified copies of which he had embodied in a statement connecting them together in narrative form, and which, with the permission of the committee, General Jeffries would read.

Mr. CONKLING objected to any statement of General Fry being read, and desired whatever testimony he adduced to be under the sanction of an oath, and that he (General Fry) should be subject to cross-examination as other witnesses.

The committee sustained the objection, and directed that each paper, as presented, should be first shown to Mr. Conkling and his counsel, if they desired, before being read.

General Fry was then duly sworn by the chairman, and, through his counsel, presented in evidence the following telegrams:

PROVOST MARSHAL GENERAL'S OFFICE,
Washington, D. C., July 29, 1863.

Hon. ROSCOE CONKLING, *Utica, New York:*

Circular No. 36, from this office, of July 1, in regard to deserters, must be sustained. The Secretary of War desires you to act as counsel in behalf of the United States in case of litigation growing out of the action of the provost marshal in Utica, as presented in your despatch of this date. Please show this despatch to the provost marshal.

JAMES B. FRY,
Provost Marshal General.

A true copy:

GEO. E. SCOTT,
Brevet Lieutenant Colonel United States Volunteers.

Received 1 p. m., July 29.

UTICA, NEW YORK, *July 29, 1863.*

Hon. EDWIN M. STANTON, *Secretary of War:*

In the absence of all of us who could aid him professionally, the provost marshal here was served with a habeas corpus to produce a deserter.

He obeyed the order not to produce, and so returned. The judge held this insufficient, and issued attachment. He has telegraphed to the district attorney and his assistants; they are absent and engaged.

What shall he do?

ROSCOE CONKLING.

A true copy:

GEO. E. SCOTT,
Brevet Lieutenant Colonel United States Volunteers.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, May 13, 1865.

SPECIAL ORDERS, }
No. 227. }

[Extract.]

36. A general court-martial is hereby appointed to meet at Elmira, New York, at 10 o'clock a. m., on the 17th day of May, 1865, or as soon thereafter as practicable, for the trial of Major John A. Haddock, twelfth regiment veteran reserve corps.

Detail for the court.

Colonel John Irvin, one hundred and forty-ninth Pennsylvania volunteers.
Colonel Edmund L. Dana, one hundred and forty-third Pennsylvania volunteers.
Brevet Colonel T. B. Hamilton, sixty-second New York volunteers.
Lieutenant Colonel James Glenn, one hundred and forty-ninth Pennsylvania volunteers.

Lieutenant Colonel John S. Hammell, sixty-sixth New York volunteers.

Hon. Roscoe Conkling is appointed judge advocate of the court.

No other officers than those named can be assembled without manifest injury to the service.

The court will sit without regard to hours.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant General.

A true copy:

GEO. E. SCOTT,
Brevet Lieutenant Colonel United States Volunteers.

The following voucher was presented in evidence, it having been admitted by General Fry that said voucher was made out at the War Department, sent to Mr. Conkling, at Utica, N. Y., signed by him, and returned to the War Department. Account, receipt, and entire paper, except signature, called a voucher:

The United States (for the Office of War Department) to Roscoe Conkling, Dr.
1865. For legal services rendered in the case of Major J. A. Haddock, \$3,000.
Approved.

Received, Washington, November 9, 1865, from John Potts, disbursing clerk for the War Department, three thousand dollars, in full for the above account.

ROSCOE CONKLING.

(Signed duplicates.)

WAR DEPARTMENT, May 4, 1866.

I certify this to be a true copy of the original voucher in my possession.

JOHN POTTS,
Chief Clerk, War Department.

The following papers were presented by General Jeffries in evidence:

WAR DEPARTMENT,
Washington City, April 3, 1865.

Having been authorized and requested by the Secretary of War to examine certain transactions in the bureau of the Provost Marshal General, relating to the western division of the State of New York, I have the honor to state that I have carefully read all the papers furnished me, as on file, touching the provost marshal of the 21st district, and having done so, from the contents of said papers, as well as from my knowledge of the facts, and of the men connected

with them, I advise and recommend that the order suspending Captain Peter B. Crandall and the other members of the enrolling board be revoked, and that said board be reinstated.

ROSCOE CONKLING.

PROVOST MARSHAL GENERAL'S BUREAU,
June 21, 1866.

A true copy.

GEO. E. SCOTT,
Brevet Lieutenant Colonel U. S. Vols.

WAR DEPARTMENT,
Washington City, April 3, 1865.

You will immediately arrest Major John A. Haddock, assistant provost marshal general, and place him in close confinement.

You will take great care at once to seize his books and papers, especially his pay-rolls and correspondence.

By order of the President.

C. A. DANA,
Assistant Secretary of War.

Col. B. F. TRACEY,
Commanding at Elmira, New York.

A true copy.

GEO. E. SCOTT,
Brevet Lieutenant Colonel U. S. Vols.

OFFICE U. S. MILITARY TELEGRAPH,
War Department.

The following telegram received at Washington, 10 p. m., 1865, from Elmira, New York, April 4, 1865:

Hon. C. A. DANA, *Assistant Secretary of War*:

Your despatch of the 3d instant, relative to Major Haddock, reached me this a. m. by special messenger from New York city, there being no government cipher at Elmira. Major Haddock was immediately placed under arrest, and confined to his room under strict guard, and allowed communication with no one. The papers, records, &c., taken into my possession—not feeling myself authorized to give any directions about the business of office—everything, even to reports, &c., is stopped. As this closes the office, I have locked it up and keep a guard posted at the door.

B. F. TRACEY,
Colonel, Commanding.

A true copy.

GEO. E. SCOTT,
Brevet Lieutenant Colonel U. S. Vols.

General Jeffries next offered in evidence a letter of Mr. Conkling to General Fry, dated December 24, 1864, for the purpose of showing the growing difference between Mr. Conkling and General Fry, as stated in the letter of the latter to Mr. Blaine.

Mr. Hotchkiss objected to the reception of the letter as immaterial. The objection was overruled and the letter received by the committee. It was read as follows:

UTICA, NEW YORK, December 24, 1864.

SIR: I had the honor yesterday to address you a letter which I enclosed for delivery to Mr. Secretary Dana, touching the proceedings of Major Haddock in relieving, without charges made known, the provost marshal of this district,

acting, as it now appears he did, in conjunction with the most malignant enemies of the government, and the most unfit advisers, and without the knowledge of any reliable citizen, as far as we can learn.

I address you again to make sure of reaching your ear with the matter as it occurs to me. Mr. Dana may be absent, and also, because a remonstrance against the act of Major Haddock has just been handed me, signed by all the supervisors of the county who can be reached, save one, and who support the government.

I think the act and the manner of it is not well judged, and, on behalf of the Union people hereabout, I ask that we may be heard before further steps are taken.

I have the honor to be your obedient servant,

ROSCOE CONKLING.

General JAMES B. FRY.

A true copy.

GEO. E. SCOTT,

Brevet Lieutenant Colonel U. S. Vols.

General Jeffries next offered the following letter, as relating to the same point to which the last paper was offered, and also as tending to prove the charge that Mr. Conkling endeavored to discredit General Fry in the eyes of his superior officers.

(Objected to by Mr. Hotchkiss on same ground as last paper.)

The letter was received by the committee and read as follows :

UTICA, NEW YORK,

December 30, 1864.

SIR : I am compelled reluctantly to trouble you touching the provost marshal of this (the 21st) district, his summary removal, and the condition of things now at the office.

About a week ago there appeared here a gentleman, (Lieutenant Colonel Poole,) bringing an order from Major John A. Haddock, acting provost marshal general of western district of New York, directing him (Poole) to take possession of the office of the provost marshal, &c., forthwith, &c., &c.; and a day or two afterwards the provost marshal received an order through Major Haddock, from General Fry, informing him that, by order of the President, he had been dismissed the service.

The proceeding being quite a surprise to the friends of the administration, many inquiries were instituted as to its origin and explanation, when it was ascertained that some time before Major Haddock had been here, not to inspect the office, as I am informed he did not do that, but for some other purpose. It was further ascertained that the major did not happen to fall in with those most likely to advise him wisely, but that his time was spent with those who industriously assail and malign the government, from the President down. After this visit of Major Haddock affidavits were, we learn, prepared by those whose character does not raise a presumption in favor of their motives, and sworn to by we know not whom, and the supposition is that Captain Richardson was removed upon charges contained in those papers.

Of course, I have nothing to say of the truth of the charges, if there are charges, as I do not know what they are. I ought, however, to say that, in common with others, I have kept a pretty close watch upon Captain Richardson, and that I have never discovered any corrupt practice in him.

But the point I want to submit is his being thus summarily disgraced without knowledge of the ground, and without being heard.

The supervisors of the county, through whom our men have been raised, have signed and lodged with me an earnest protest against the proceeding, which I

hold, not knowing what disposition should be made of it; and, I think, all upright people here, to whose knowledge the matter has been brought, regard the proceeding as not fortunate. Colonel Poole is a total stranger to us all, though his acquaintance has been, or had been before his coming, formed by one or two persons, whose connexion with the business of recruiting, and whose personal and political character are not likely to prove of service to the colonel or to the public. The management of the office, displacement and appointment of clerks, and the like, is carried on adversely to the wishes of the Union men, and by those who ought to have nothing to say in the matter. In short, the whole affair takes the shape of a movement inspired by those hostile to everything represented by the government, and its effect just now upon the business of raising men upon the pending quota, as well as generally, is not desirable.

It is understood that Colonel Poole is only a *locum tenens*, to be succeeded presently, and, it is said, that the editor of the copperhead paper here has been asked by Major Haddock to signify his preference as to a successor. The persons who affect to be in the secret name those whose selection would be outrageous every way, and, as it looks, except I trouble you in this way, which I do at the request of the mayor of this city, a number of supervisors, and many prominent citizens, we are to be ignored, and the whole Union sentiment here overslaughed by secret means and unworthy persons.

If it is desired to change any or all the members of the enrolling board, we shall be glad to select the best successors we can, and to present them, commended by our best citizens. I trust the matter may receive some direction from you.

I have the honor to be your obedient servant,

ROSCOE CONKLING.

The PRESIDENT.

UTICA, December 30, 1864.

To the President :

The undersigned fully concur in all the suggestions in the letter of Mr. Conkling; and take the liberty to say that the immediate intervention of the President is desirable.

WILLIAM J. BACON,
Judge of the Supreme Court.

ELLIS H. ROBERTS,
Proprietor and Editor Utica Herald.

WARD HUNT.

ERASTUS CLARK,

Deputy Secretary of State of New York.

T. R. WALKER, *Collector.*

C. H. HOPKINS,

Member of State Central Committee.

A true copy.

GEO. E. SCOTT,

Brevet Lieutenant Colonel United States Vols.

The following letter was next presented in evidence by General Jeffries :

UTICA, N. Y., January 11, 1865.

SIR: After much consultation among our leading citizens in reference to a suitable person to be appointed provost marshal of this (the twenty-first) district, in case it is or has been determined to appoint a successor to Captain Richard-

son, the prevailing opinion points to Peter B. Crandall for the place. He is a thoroughly honest man, and I concur in recommending his appointment.

I have the honor to be your obedient servant,

ROSCOE CONKLING.

The PRESIDENT.

PROVOST MARSHAL GENERAL'S BUREAU, *June 21, 1866.*

A true copy.

GEO. E. SCOTT,

Brevet Lieutenant Colonel U. S. Vols.

General Jeffries proposed to present in evidence certain extracts from a letter from Mr. Conkling to Mr. Dana, dated 13th of March, 1865.

Mr. Conkling objected, unless the whole letter was read.

The committee decided to require the entire letter to be produced, which was done, and the letter was accordingly read, as follows :

UTICA, N. Y., *March 13, 1865.*

MY DEAR SIR: I received your letter, as to the enrolment board here, on Saturday. I handed it to Mr. Hunt to answer, and assented to the use of my name in sending you a message by telegraph.

Viewing the action which has been taken as I do, my equanimity would be consulted by thanking you for your note and stopping, but I think, standing in the relationship I do to the government, I ought to give my testimony in the matter for what it is worth.

Captain Crandall was not selected by me, but I heartily concurred in the selection. I should have picked him out of all the men presentable for the place as one whose purity would never even be suspected. His integrity is above all question, and I will do for him what I never in my life have done but once—I will be personally responsible for him; and I take it upon myself to pronounce the charges you refer to infamously false. In saying this, I do not rely alone upon an intimate knowledge of him for many years, but also upon the fact that throughout his short experience as provost marshal he has constantly, from day to day, confided to me his troubles, his proceedings, and the attempts made upon him. That he has committed frauds in his office is not possible; so far from this, he has striven so zealously and anxiously to do his duty that his only offence is that he could not be bought by scoundrels. He has been coaxed and threatened, and even the suspension which has come was announced by the bounty brokers and scalpers two weeks ago. The result is a triumph of thieves, and General Fry, assuming he is pure himself, is the victim of the worst imposition.

To give you a whiff of the odor of the thing, let me mention this: Major Beadle, who has appeared here with Major Haddock's orders, at once inquired for a clerk who was dismissed for corrupt practices weeks ago, and whose restoration was at once demanded by Major Haddock, with a menace. Having obtained as much knowledge as was at hand of where this clerk was to be found, Major Beadle stated to whom he had brought a letter of introduction, and it was a man vile in character and disgracefully connected with the business of bounties.

Now, as to Major Haddock, I have for weeks endeavored to get at the bottom of many unwholesome proceedings, and I have been patiently over a mass of evidence relating to enlistments, desertions, and other kindred matters. Having done so, I cannot resist the conclusion that Major Haddock is a scoundrel, in league with bounty brokers, and a sharer of their plunder. To such ends have his official powers, connected with this district at least, been used for weeks, as I think no man can seriously doubt who will go over the facts.

I will not weary you with particulars, but I earnestly advise that some honest

and suitable man be placed at Elmira at once, and I am ready to put my suggestion in any form which may be advisable. I wish, by the way, you would send for Mr. Gall, whom Colonel Olcott sent here, and talk with him on this subject. He came after the bird had flown, but I think he must have gathered pretty convincing evidence. One word further. A part of the design is to have a harvest for the ring by commencing a draft here *day after to-morrow*, although our quota is more than full, and the men have gone forward, and have reached their destinations in numbers greater than the entire quota.

I hope this wrong will be prevented on every account. It would apply a test to our "loyalty" beyond anything we have yet been called to withstand.

For one, I shall attempt no concealment of the true solution of the matter, believing, as I do, that the administration of this branch of the service is irreconcilable with that healthfulness at headquarters which we all have a right to require. Had General Fry sent to Elmira William R. Pease, (captain in the regulars, and colonel of volunteers till his health failed, and he went into General Fry's office,) I believe there would have been fewer desertions by hundreds, and less thefts by hundreds of thousands. Surrounded as you are by so many weightier matters, you may smile at my earnestness; but if you knew exactly what I know, your indignation would be as great as mine, and mine goes to just that extent that I feel, as to the Provost Marshal General, that we are at the mercy and dictation of thieves, and if I live, and can do so, I will get to the bottom of this particular proceeding, and give it such ventilation as will conduce to the general health.

Always your friend,

ROSCOE CONKLING.

Hon. C. A. DANA.

A true copy :

GEO. E. SCOTT,

Brevet Lieutenant Colonel U. S. Volunteers.

Mr. Conkling asked, and the committee directed, that the letter of Mr. Dana, to which the above is a response, be also produced by General Fry.

General Jeffries next presented in evidence the following letter:

UTICA, N. Y., *March 29, 1865.*

SIR: I have the honor to submit the following facts:

Some time ago the enrolling board of this district (the twenty-first) was suspended for reasons, as is inferred, supposed to exist touching Captain Peter B. Crandall, provost marshal.

Up to this time no charges or intimations of any sort have been given him; but, on the contrary, I think all who have taken pains to inform themselves are satisfied that he is thoroughly upright and trustworthy. I have very carefully examined the whole matter, and I respectfully and earnestly request that the order of suspension be revoked, and Captain Crandall and his associates be reinstated.

I have the honor to hand you herewith letters from Captain Crandall and Commissioner Monroe, addressed to myself, which I have caused to be printed. They are quite truthful, I have no doubt, as far as they go; but there is much more convincing evidence in the same direction.

A wrong is done every day while things remain as they now are.

I have the honor to be, your obedient servant,

ROSCOE CONKLING.

Provost Marshal General FRY.

A true copy :

GEO. E. SCOTT,

Brevet Lieutenant Colonel, U. S. Volunteers.

WASHINGTON, D. C., *May* 24, 1866.

JAMES MCQUADE sworn and examined.

By General JEFFRIES:

Question. Where do you reside?

Answer. Utica, New York.

Question. What is your present position in Utica?

Answer. I am mayor of the city.

Question. What have been your business pursuits since 1861?

Answer. I have been engaged in manufacturing. In 1861 I entered into the army as colonel of the fourteenth New York volunteers.

Question. How long did you remain in the service?

Answer. Two years.

Question. What official position, if any, did you hold during the year 1864?

Answer. I was appointed by the board of supervisors of Oneida county disbursing agent, to disburse the county bounties.

Question. When were you appointed disbursing agent by the board of supervisors for Oneida county?

Answer. It was in the month of July, 1864. I might here add that I was appointed without my knowledge, and without any solicitation on my part.

Question. To whom did you pay the bounty?

Answer. It was paid on the certificate of the provost marshal to the provost marshal himself in the case of volunteers, except in cases where the money was sent with the recruit to the general rendezvous; but sometimes the recruit would prefer to leave the voucher in the hands of the provost marshal. When he reached the general rendezvous the money was paid to whoever presented the voucher. In the case of substitutes the money was generally paid to the principal.

Question. Who was provost marshal during the time you acted as disbursing agent for Oneida county?

Answer. Captain J. P. Richardson.

By Mr. HOTCHKISS:

Question. All the time?

Answer. Yes, sir.

Question. For what period did you act as disbursing agent for Oneida county?

Answer. I disbursed under the call of July 18, 1864, the bounties paid under that call.

Question. When did you cease to act as disbursing officer?

Answer. I cannot recollect the date exactly; I think some time in December.

Question. Who succeeded you as disbursing agent?

Answer. There was none appointed. The next call they changed the system. Each supervisor disbursed the bounty for his own town.

Question. State whether on any occasion you ever had presented to you by Provost Marshal Richardson duplicate vouchers of bounty for the same men.

Answer. Yes, sir.

Question. In how many instances?

Answer. I cannot recollect now. Perhaps there may have been a dozen. I would not be sure. I know there were several.

Question. State whether you called the attention of the supervisors of the county to that fact.

Answer. No, sir; the supervisors were not in session. I called the attention of the committee who had charge of such matters to the fact.

Question. What committee was that?

Answer. That was a committee appointed by the board of supervisors, con-

sisting of Supervisors Rouse, Anderson, and Preston. Their attention was called to it.

Question. What was the manner in which you kept your accounts of disbursements?

Answer. I kept them in a large book containing the name of the recruit, the town for which he enlisted, term of service, amount of bounty paid, and to whom paid, and the number of the voucher on which the payment was made. In the case of a substitute the name of the principal was mentioned.

Question. How much, if any, bounty did you pay for twenty-one men that were enlisted and credited to Verona, and about whose enlistment there was some question?

Answer. I paid, I think, at one time some forty or fifty men from the town of Verona, some of whom had been enlisted outside the district.

Question. Is Verona a sub-district of Oneida county?

Answer. Yes, sir.

Question. What were the facts in connexion with that case?

Answer. I ascertained afterwards that the persons who received the bounty had been paid for twenty-one of these men on improper vouchers from the provost marshal.

Question. Who signed the vouchers?

Answer. Captain J. R. Richardson, provost marshal.

Question. What was there about those vouchers that was improper?

Answer. The resolutions of the board of supervisors under which bounty was payable in the county of Oneida provided for the payment of the bounty to all men who enlisted after the 13th of July, 1864. I ascertained subsequently that twenty-one of these men had enlisted before the 13th day of July. They were enlisted outside of the district in February or March, 1864; at least the records of the provost marshal so show.

Question. Did Richardson certify as to the date of the enlistment of these men?

Answer. It was the usual certificate.

Question. State whether you paid any bounty except where the certificate of Richardson showed that the men had been enlisted subsequent to the 13th of July, 1864.

Answer. The certificate did not show the date of the enlistment. That was not the form of the certificate.

Question. How much bounty did you pay to these twenty-one men?

Answer. I think they were three-years men. If so, I paid to the agent of the town \$500 apiece, making \$10,500 in all. I am very confident they were three-years men. Some of them were substitutes for different individuals in the town of Verona.

Question. Do you know anything in relation to James Brown, of Utica?

Answer. I paid a bounty for a man of that name.

Question. Where was he enlisted?

Answer. At Utica.

Question. By whom?

Answer. By Captain Richardson, provost marshal.

Question. How much bounty did he get?

Answer. Five hundred dollars.

Question. That is local bounty?

Answer. I speak of county bounty.

Question. What did he do, so far as you know, after he enlisted; what became of him?

Answer. I saw him around the city frequently afterwards.

Question. Where is he now?

Answer. He is in Utica; at least he was a month ago.

Question. What business, if any, did he go into after he enlisted?

Answer. He kept a restaurant for some time afterwards.

Question. Did he go into that business after you paid him the bounty or before?

Answer. I cannot say as to that. I know he was in the business after the bounty was paid.

Question. State whether, to your knowledge, he was ever in active service, sent to the rendezvous, or served in any regiment.

Answer. He never has to my knowledge.

Question. State what means you have of knowing whether he was sent to the rendezvous or not.

Answer. I have no means of knowing whether he was sent to the rendezvous or not. I saw him very often afterwards. I do not think he went to the rendezvous, but, of course, I could not say as to that.

Question. About how often did you see him after his enlistment for the next year or two?

Answer. I should think I saw him once in three or four weeks.

Question. State whether during the time he was keeping a restaurant he was dressed in the uniform of a soldier.

Answer. Yes, sir; he was.

Question. Do you know at what date he was enlisted?

Answer. I could not state positively. I think it was in the month of August, 1864.

Question. Did you have a political campaign during that fall?

Answer. Yes, sir; there was a presidential election that fall.

Question. State what you know, if anything, in regard to Brown attending meetings.

Answer. I do not know anything about his attending any meeting. I did not attend any myself, and cannot say anything about him.

Question. What, if anything, do you know about a man by the name of Ambrose Brazie?

Answer. There was a bounty paid to a man of that name.

Question. State what you know in regard to his being sent forward to the rendezvous or to the army.

Answer. I do not know whether he was sent forward or not. I saw him in Utica after he received the bounty.

Question. How long after?

Answer. About a month.

Question. What do you know in regard to the enlistment of Mark Lanning?

Answer. There was a bounty paid for a man by the name of Mark Lanning.

Question. Who paid it?

Answer. I paid it.

Question. To whom did you pay it?

Answer. I paid it to Mark F. Hamilton.

Question. What became of Mark Lanning; how did he get out of the service?

Answer. I do not know whether he was in the service. I only know that I paid a bounty to such a man for such a man.

Question. On whose voucher did you pay the bounty?

Answer. On the voucher of the provost marshal, Captain Richardson.

Question. What do you know, if anything, about Captain Richardson discharging him and taking another man in his place, to whom bounty was paid?

Answer. I had understood that the man was never in the service, and I applied to Richardson to refund the bounty.

Question. What did you or he do then?

Answer. He said that the man had not gone into the army; that he had taken another man in his stead—a man by the name of Charles H. Warren. I then

discovered that I had paid a bounty for Charles H. Warren also. I called the attention of the board of supervisors to it at their next session.

Question. On whose certificate did you pay this bounty for Charles H. Warren?

Answer. Captain Richardson's, the provost marshal.

Question. Who was clerk of the board of supervisors at this time?

Answer. T. B. Allen.

Question. Are you acquainted with Aaron Richardson?

Answer. Yes, sir.

Question. When did Aaron Richardson first make his appearance at Utica in the shape of a broker or recruiting agent, so far as you know?

Answer. I could not state positively. I know he was there in the summer of 1864, although I was not at that time acquainted with him. I know that there was such a man there.

Question. Was Aaron Richardson about Utica at the time you were disbursing county bounty?

Answer. Yes, sir.

Question. Did you pay a bounty to a man by the name of John Dean, or for him to anybody?

Answer. No, sir.

Question. State what, if any, claim was presented to you on that account.

Answer. Captain Richardson, the provost marshal, presented a voucher for a bounty for John Dean, or Charles Dean, as I think it was on the voucher. I would not be certain on this point, however.

Question. Was he a recruit or substitute?

Answer. I do not know; the papers did not show.

Question. What were substitutes worth at that time?

Answer. I could not say of my own knowledge. I never was interested in procuring substitutes. I have heard from gentlemen who had procured substitutes that they were very high in those days.

Question. Did you pay the bounty when Richardson presented the claim to you?

Answer. I had been informed that a man by that name was a deserter, and the committee instructed me not to pay bounty to deserters at that time.

Question. Did you ever know or hear of any such man as John Dean in that county?

Answer. No, sir; I never knew any such man.

Cross-examined by Mr. HOTCHKISS:

Question. Were you in the habit of travelling a good deal about in those days, from place to place?

Answer. No, sir; I was not.

Question. I suppose you were in Albany, or in New York, from time to time during the year 1864?

Answer. Yes, sir.

Question. Do you remember by whom your appointment was moved in the board of supervisors, as disbursing agent?

Answer. No, sir; I was not consulted about it.

Question. Was it John H. Douglas that moved your appointment?

Answer. I do not know. I think it was Peter Cloyd. I would not be certain. It is my impression that it was Cloyd.

Question. Were the vouchers from the provost marshal's office, of which you speak, printed blanks filled up?

Answer. Yes, sir.

Question. By the provost marshal in person, or his clerk?

Answer. By both.

Question. A great many of these vouchers passed through your hands during your term of service?

Answer. Yes, sir.

Question. About how many?

Answer. Over 1,400.

Question. How many sets of papers, supposing the business regular, were made out for each man? I speak now of these enlistment papers.

Answer. I think the enlistment papers were in quadruplicate. I think there were four sets of enlistment papers.

Question. How many papers in a set?

Answer. There was one paper in a set.

Question. An enlistment paper, then, is quadruplicated; that makes four enlistment papers to each man?

Answer. Yes, sir.

Question. Are these four papers all there are?

Answer. I think so; I am not authority in these matters.

Question. This voucher which you speak of for the county bounty, how many of these are there for each man?

Answer. One voucher.

Question. What other vouchers for other bounty are there?

Answer. A voucher for the town bounty when it is paid, and a voucher for the premium or hand money, \$25. I do not know of any more.

Question. Was there any for United States bounty?

Answer. Not that I know of.

Question. In how many instances among these 1,400 vouchers that passed through your hands was a county bounty voucher duplicated?

Answer. I think ten; I am not certain.

Question. Can you name the men?

Answer. I think I could name two or three of them. Thomas Clark was one of the cases in which there was a duplicate voucher. I think there was also a man by the name of Patrick Kelley; also the case of Jacob Tubah.

Question. Have you looked at your memorandum and records with a view to be able to testify about this?

Answer. No, sir.

Question. You have not any of your memoranda or books with you?

Answer. I have a book here containing a record of all the bounties paid. It is at my place of residence.

Question. Have you any memorandum here relating to this general matter?

Answer. No, sir.

Question. When you speak of duplicate vouchers, if I understand you aright, you mean that the voucher for county bounty was twice made out and twice signed?

Answer. Yes, sir.

Question. You stated that you called the attention of the committee of the board of supervisors to it; did they attend to the matter and have it corrected?

Answer. I attended to it myself for them.

Question. Was it corrected in each of these cases of duplicated vouchers?

Answer. Yes, sir; I think it was except in the case of Tubah; I believe that has not been corrected yet.

Question. What was the difficulty about correcting that?

Answer. Not any. I will state that in the other cases the provost marshal refunded the bounty. In the case of Tubah his duplicate voucher was sent to his father in Buffalo.

Question. Was it ever paid?

Answer. It was presented to me.

Question. The duplicate voucher was presented but not paid?

Answer. Yes, sir.

Question. Then there was nothing to correct?

Answer. No, sir. It was discovered, when it was presented, that the mistake had been made.

Question. In how many cases shall I understand did you pay the bounty, before any of you discovered that there had been a mistake made?

Answer. I should say, to speak within limits, probably five.

Question. And in these five cases was the error discovered before the money had passed out of the hands of the provost marshal, or did he become the loser by it, in any instance?

Answer. I could not say as to that. Of course, I had no knowledge of what he did with the money.

Question. But you know that whenever he was called upon by the committee to refund the money, he never failed to do so?

Answer. He never failed to refund the money.

Question. Was there any way by which the provost marshal could have profited by giving duplicate vouchers, unless he got the money in his hands and stole it; anything short of that would not be any inducement to him to do such a thing intentionally?

Answer. I do not know that there could be.

Question. In that respect would it not be just like an agent or cashier or anybody who exacted a receipt twice or any other voucher twice—a thing which would be of no benefit to him, one way or the other?

Answer. I could not, of course, speak as to that.

Question. Is there anything in the transaction itself which could bring any possible advantage to him more than to any other agent who executed a receipt twice by mistake?

Answer. I should think not.

Question. Was there not a great pressure of business at the provost marshal's office about those days—great haste in making papers and signing papers?

Answer. Yes, sir.

Question. Captain Richardson was greatly pressed with work, and it had to be done in a very hasty way?

Answer. Yes, sir.

Question. Do you happen to remember whether these vouchers, which were duplicated, were in the same handwriting, or were made out at different times by different clerks?

Answer. I do not remember; they were all signed by Richardson.

Question. Can you state whether in any case they were filled up by Captain Richardson?

Answer. I cannot say.

Question. As you had a great deal of business with the provost marshal's office, can you state whether it was the custom to have these papers filled up as rapidly as they could be and to carry them to Captain Richardson in large numbers for his signature?

Answer. I was very little in the office. I presume that to be the case as a matter of course. It was the duty of the clerks to fill in the body of the voucher.

Question. Do you know the fact that even in preparing names for the draft—and I speak of many districts—the same name would go in the box two or three times in spite of the care that was taken?

Answer. I know that fact from having read of it. It was very common, as I understood.

Question. It occurred in various districts?

Answer. Yes, sir, in various districts.

Question. Did Captain Richardson make any statement or representation, to

your knowledge, as to the time when the twenty-one Verona men spoken of were enlisted?

Answer. He made no statement to my knowledge.

Question. The money which was paid for these twenty-one men belonged to Oneida county?

Answer. Yes, sir.

Question. The United States had no interest in it one way or the other?

Answer. No, sir.

Question. Did the certificate of these men, whom you say were enlisted outside the district, state that it appeared from papers on file in his office that they were enlisted on such a date at such a place?

Answer. I could not state that.

Question. Have you any knowledge of the matter whatever except what you have gained by looking at some papers?

Answer. None at all, sir.

Question. When did you first see these papers, whatever they were?

Answer. I think it was in December, 1864.

Question. Have you any knowledge whatever that these men were not regularly and properly enlisted?

Answer. No sir.

Question. Then the criticism suggested by the questions and answers is that they were enlisted before instead of after a certain day?

Answer. Yes, sir; they enlisted before the 13th of July.

Question. And therefore they did not come within the resolution of the board of supervisors as to paying them bounty?

Answer. Yes, sir.

Question. The only act, if I understand you, done in connexion with these men by the provost marshal, was to sign the certificate that they were regularly enlisted and mustered into the service for a length of time. Do you mean us to understand that there was anything whatever in that certificate false, or not according to the fact in any respect?

Answer. The certificate itself contained nothing but what was true.

Question. Was the affidavit signed by the recruit himself?

Answer. No, sir.

Question. By whom?

Answer. It was signed by the agent of the town.

Question. Somebody who had nothing to do with the provost marshal's office?

Answer. Yes, sir.

Question. It is not true, then, that in each of these cases Captain Richardson had before him an affidavit showing not only whatever he certified to was true, and, in addition to that, each one of these men enlisted after or since the 13th of July, 1864?

Answer. No, sir.

Question. The certificate was made out by the provost marshal before the affidavit was signed?

Answer. Yes, sir.

Question. How do you know that?

Answer. I know that to be the rule; the papers were presented, and the affidavit made out afterwards.

Question. Then the rule was to make the affidavit out after the certificate?

Answer. In the case of men who enlisted after the 13th of July.

Question. Was it not true that all along at that time certificates were given by the provost marshal to men who had enlisted without the slightest reference to whether they enlisted before the 13th of July or afterwards—that fact only being important to those who claimed the bounty?

Answer. I do not know.

Question. Do you not know that these certificates were given just as much before the 13th of July as afterwards; and that the only distinction between these cases was, that those who enlisted on or after the 13th of July, 1864, got the bounty, but that there was no distinction in the form of the certificate?

Answer. Yes, sir; these certificates were given under previous calls in the same way.

Question. Was not the certificate of the provost marshal, as to the enlistment of these men, sufficient?

Answer. No, sir; the provost marshal had no business to give a certificate upon that voucher.

Question. Upon which voucher?

Answer. Upon the voucher on which they were paid.

Question. Was the voucher given before the certificate?

Answer. The voucher and the certificate were all the same paper.

Question. The affidavit was on the same paper, but was filled out afterwards?

Answer. Yes, sir, the affidavit was filled out afterwards.

Question. The voucher was not complete until the affidavit was filled up? I now speak of the receipt and the order to pay; is it not true that they were not filled up until the affidavit was completed?

Answer. They were all filled up together, the affidavit and receipt.

Question. And they were both filled up after the certificate had been given?

Answer. Yes, sir.

Question. If there were any blunder or wrong committed, did it not consist in filling up the affidavit, swearing to it, if it were incorrect, filling up the receipt and order to pay, and presenting them to you for payment; was not that the wrong?

Answer. That was the wrong.

Question. Why was it wrong?

Answer. Because these men had enlisted before the 13th of July.

Question. For no other reason?

Answer. That is the only reason, because they did not come within the resolution.

Question. Did any controversy arise afterwards between the town of Verona and its agent as to whether these men were enlisted before the 13th of July or afterwards?

Answer. I understood that there was such a controversy.

Question. What is the name of that agent?

Answer. Edgar Peckham.

Question. Is there any other agent?

Answer. I believe there was a man by the name of Archibald Hess.

Question. Is it, as you understand, now in litigation before the courts whether these men were enlisted before or after the 13th of July, 1864?

Answer. That is the litigation, I have no doubt.

Question. And that case has not been decided yet?

Answer. No, sir, as I am informed.

Question. Is that all you know about these twenty-one recruits?

Answer. Yes, sir.

Question. Who applied to you to know if you could give any information about that matter to be brought into this investigation?

Answer. Nobody.

Question. Who subpoenaed you here?

Answer. Mr. Cheeney, the sergeant-at-arms.

Question. Did you see a young man from General Fry's office in Utica?

Answer. None from General Fry's office. A Mr. Ennis, from Albany, I think, called on me.

Question. He is one of General Fry's employés.

Answer. I think so.

Question. What is his position?

Answer. I think he is a clerk in the office of the acting assistant provost marshal general in Albany.

Question. Did he come from Albany?

Answer. So he informed me.

Question. By authority or direction of General Fry?

Answer. I do not know.

Question. When did he come to Utica?

Answer. I think it was last week some time.

Question. Did he come to your house?

Answer. He went to my house, but I was absent, and he went to my office.

Question. Who came with him?

Answer. Nobody.

Question. How often did you see him?

Answer. I saw him several times; a half a dozen times, perhaps.

Question. Who, at any of these interviews, were with you and Mr. Ennis?

Answer. Nobody. I went and took a drink with him at one time; there were several parties with us at that time.

Question. Who were they?

Answer. I think Mr. Church was one of them, and Colonel Hulser, of Utica, also Dr. Hunt, of Utica.

Question. Who else were present when you took this drink?

Answer. Mr. Spencer, who kept the saloon where we imbibed, and Mr. Kelley, his partner. Mr. Lewis H. Babcock was there also, I think. I do not recollect of anybody else now.

Question. Do you say that you cannot name any other person who took part with you and Mr. Ennis in talking this matter over?

Answer. No, sir; I do not remember of anybody.

Question. Did you give Mr. Ennis any statement about these Verona men?

Answer. I think I did.

Question. Did you give any one else any information about it?

Answer. No, sir.

Question. And have you now stated all that you know of the Verona men, and all imputations of fraud, if such it be, within your knowledge that can be made against Captain Richardson?

Answer. Yes, sir.

Question. You speak of James Brown; will you be good enough to describe him, or locate him in some way so that we can trace him?

Answer. He kept a restaurant in Utica. He is a brother of Mr. John Brown, of the Third ward, and of Mr. Richard Brown and Robert Brown.

Question. In what part of the city did he keep a restaurant?

Answer. On Fayette street.

Question. His own or some other person's?

Answer. His own.

Question. Did you say you paid a county bounty to him?

Answer. I paid it to the provost marshal for him.

Question. How much?

Answer. Five hundred dollars.

Question. You paid it to Richardson?

Answer. Yes, sir.

Question. Do you know whether that bounty went to Brown, or went to some other man who took his place?

Answer. I know that Brown sued the provost marshal for it.

Question. When was that?

Answer. I think it was in the winter of 1864, or the spring of 1865. I think it was in the spring of 1865.

Question. You say you know he sued him?

Answer. Yes, sir; his attorney came to me to get some vouchers.

Question. Who was his attorney?

Answer. William Rathburn.

Question. Do you know who was Captain Richardson's attorney?

Answer. No, sir.

Question. Do you know whether the case was tried?

Answer. I do not.

Question. Do you know whether the litigation was, that this bounty was withheld from him, and was paid to another man, who went as a soldier?

Answer. I heard that was the case.

Question. You have no doubt about it?

Answer. No, sir.

Question. Do you know who the other man was to whom the bounty was paid, as you understood?

Answer. No, sir.

Question. Did you ever take pains to find out?

Answer. I never did anything in the matter at all, except to furnish copy of voucher.

Question. Is that all that you know of that case?

Answer. Yes, sir.

Question. Did you say that Brown had a uniform?

Answer. Yes, sir.

Answer. Do you know how long he had it?

Answer. No, sir.

Question. Do you know that his uniform was taken from him?

Answer. No, sir.

Question. You understood that it was?

Answer. No, sir; I never inquired about it.

Question. Do you know, or did you hear, what was the difficulty with that man—what were the circumstances which led to another man being put in his place?

Answer. No, sir; I never inquired into the matter at all.

Question. To which family does this Brazie of whom you speak belong?

Answer. I am not sure. I do not know whether he belongs to the Brazie that lives over the river or not.

Question. Mr. Brazie had a son who was an officer in the army living with him?

Answer. Yes, sir.

Question. What was his name?

Answer. William R. Brazie.

Question. What rank did he hold?

Answer. He was captain in my regiment. I think that this Brazie I speak of belongs to another family. I think he is a cousin of Captain Brazie.

Question. Did you say that you paid a bounty to him?

Answer. Yes, sir.

Question. Do you know when it was paid?

Answer. Some time in the summer of 1864.

Question. Do you mean now to say that that man did not go into the service?

Answer. I did not know anything about it.

Question. Did this man live in Utica?

Answer. Yes, sir.

Question. It is not usual nor at all uncommon when a man who is known enlists to let him have a furlough to fix up his affairs, &c., before sending him to his regiment?

Answer. I believe it was customary. Men were often kept on duty around the barracks, &c.

Question. And do you mean to say that there was anything improper on the part of Brazie or the provost marshal in this case? Do you know anything about it, except that there was such a man to whom you paid a bounty?

Answer. That is all, and that I saw him after he enlisted.

Question. If he had had a furlough to remain a short time that would have been proper?

Answer. Yes, sir.

Question. Who is this Mark Hamilton you speak of; do you mean the loan commissioner of the county who lives at Stiltsville?

Answer. Yes, sir.

Question. Where did Mark Lanning live?

Answer. I do not know?

Question. To whom did you pay his money?

Answer. Mark Hamilton.

Question. Who told you that this man was not in the service?

Answer. Mr. Edgerton, a supervisor, told me he was not in the service. He said he was in the town of Alva, I think.

Question. What did you do then?

Answer. I went to Provost Marshal Richardson's.

Question. Had he known of this before you went there, or was this the first he heard of it?

Answer. He had known of it before.

Question. You then learned from him that another man had taken his place?

Answer. Yes, sir.

Question. Did he say who did the business? who gave the other man?

Answer. He said he took a man in place of this man.

Question. Did he say who did the business; whether Lanning came or somebody for him?

Answer. Captain Richardson said he had let this man off and had taken another man in his place, one C. J. Warren, and that this voucher had got into the possession of Hamilton, and it should not be paid. He wanted me to speak to Hamilton about it.

Question. Did he give you all the facts that he had about it frankly?

Answer. Oh, yes; he made no concealment.

Question. Did you see Mr. Mark Hamilton about it?

Answer. I sent Mr. Hamilton a note asking him to refund.

Question. Was the money refunded?

Answer. No, sir; his attorney, Mr. Jenkins, called upon me in regard to it.

Question. Which Mr. Jenkins?

Answer. Hiram T. Jenkins.

Question. What did become of it?

Answer. The money was not paid. I called the attention of the board of supervisors in regard to it, and there I left the matter.

Question. Do you know whether the supervisors attended to it?

Answer. I do not.

Question. Do you intend the committee to understand you as imputing in that transaction any dishonest or improper motive or intentional wrong to Joseph P. Richardson?

Answer. No, sir; I merely state the fact.

Question. So far as you know, Warren did go to the army?

Answer. I never heard anything to the contrary. I presume he did.

Question. Is there any fact whatever about this transaction that you have stated, or that you can state, which in any way reflects upon Mr. Richardson?

Answer. No, sir.

Question. Did you have a great deal to do with that office in one way or another?

Answer. Yes, sir; in my official capacity.

Question. Did you have as much opportunity of knowing what went on there as any other man who was not actually employed in the office?

Answer. I should think so.

Question. Did you or anybody else that you have any knowledge of ever mention to Mr. Conkling any of these circumstances you have spoken of?

Answer. Not to my knowledge.

Question. Under which call was it that you heard of this man?

Answer. Under the call of July 18, 1864.

Question. Was there any draft in Oneida county under that call?

Answer. No, sir.

Question. Was not the quota of the district filled, and more than filled?

Answer. It was.

Question. Was it filled by one, two, or three hundred men more than the amount?

Answer. It was more than filled; I could not say as to the exact number.

Question. The quota of the Second ward was filled, was it not?

Answer. I believe it was.

Question. Do you happen to know that in that ward quite early the residents raised a volunteer fund, quite a large fund, by which they filled their quota?

Answer. There was a recruiting committee formed, which raised a subscription.

Question. It was pretty early, was it not?

Answer. Yes, sir; it was done early; there was no city bounty at that time.

Question. Did Mr. Conkling reside in that ward?

Answer. Yes, sir.

Question. Was he one of those who subscribed to this fund which was raised?

Answer. I do not know; I never saw the subscription list; almost everybody in the ward of any prominence subscribed; I have no knowledge of who subscribed particularly.

Question. Do you know that it was quite common for gentlemen who were not liable to the draft, by reason of being over age or married, or whatever it may be, to put in substitutes, representative substitutes?

Answer. Yes, sir.

Question. If a substitute or recruit for this purpose enlisted, and before he took the oath, for example, he changed his mind and backed out, was one set of papers completed and sent forward for that man?

Answer. I do not know; I should say not.

Question. In sending a man forward to the draft rendezvous, if a man was expected to go and did not go, was his name crossed out from the list; does not, in fact, the crossing of a man's name from the list indicate that he did not go?

Answer. It means that he did not go.

Question. The paper which I showed to you shows, does it not, that no credit was given for John Dean; no receipt given for him, and that he never went?

Answer. No, sir; not on that paper; that is simply a receipt for eight men.

Question. Who is John C. Hoyt?

Answer. He is a citizen of Utica—a man of irreproachable character.

Question. Did he live in the Second ward?

Answer. Yes, sir.

Question. Was there ever any voucher presented to you for James Brady Mr. Hoyt's substitute?

Answer. Yes, sir.

Question. Did you ever pay anything for his substitute?

Answer. The voucher for James Brady was presented at the time of enlistment.

Question. Did you pay it?

Answer. Yes, sir.

Question. How much did you pay for James Brady?

Answer. I could not state now, because I forget whether he was a one, two, or three years man. If he was a three-years man, I paid \$500; I presume he was.

Question. Is there anything about the enlistment of John Dean, or any other matter connected with him, or connected with his being a substitute, or refusing to go as a substitute, irregular, wrong, or in any respect improper as to any person whatever?

Answer. No, sir; not to my knowledge.

Question. Do you know in any way that he was a deserter in any sense, except that he was not paid or credited and did not go forward?

Answer. No, sir.

Question. Did this young man Ennis, of whom you speak, make application to you for information about a substitute who had been put in by Mr. Conkling?

Answer. No, sir; he did not.

Question. Have you looked in reference to this matter of John Dean before leaving Utica?

Answer. No, sir.

Mr. HOTCHKISS. I ask to be informed by General Fry or his counsel what their purpose or intention is in reference to John Dean and the papers that have been put in in regard to him, and also whether there is any insinuation to be made of an impropriety on the part of Mr. Conkling in regard to John Dean.

General JEFFRIES. General Fry expects to be able to show that there never was any such man enlisted as this man John Dean or mustered into the service; that it was a fiction on the part of Richardson and that he improperly struck the name of Roscoe Conkling from the enrolling list as having furnished a substitute when no substitute was furnished.

(Exhibit W. W. 40 was here shown to witness.)

Question. Does not this paper show that Mr. Conkling was exempt without reference to putting in a substitute?

Answer. It shows that he was exempt without furnishing a substitute.

The examination of the witness having been concluded, General Jeffries stated that he proposed to introduce proof to show Mr. Conkling's official character as judge advocate of the Haddock court-martial.

Mr. Conkling admitted to the committee that on the trial of Major John A. Haddock he did all the acts which would have been done by a judge advocate duly commissioned, had such judge advocate been detailed for said trial; that he issued the proper subpoenas, and that he took the following oath:

"You, Rosco Conkling, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law; nor divulge the sentence of the court to any but the proper authority until it shall be duly disclosed by the same: So help you God."

MAY 24, 1866.

Major W. H. H. BEADLE sworn and examined.

By General JEFFRIES:

Question. Where do you reside?

Answer. I reside at Marshall, Michigan.

Question. While you were in the service were you stationed at Utica; and so, in what capacity, and when?

Answer. I was stationed at Utica, N. Y., as acting provost marshal of the 21st district of the State, from the 13th day of March, 1865, to the 15th day of October, 1865.

Question. Who was your immediate predecessor as provost marshal of the 21st district?

Answer. I relieved P. B. Crandall.

Question. Go on and state, if you please, the condition in which you found the office and its surroundings when you came there to take possession, its general management, &c.

Answer. I found the office, on my arrival, occupied by the provost marshal, clerks, and others. I did not have an opportunity to examine the records until a day or two afterwards. I found the office in a rather confused shape; the records irregular, incomplete, and inaccurate, and the books scattered about. It lacked precision.

Question. What was the condition of the papers and books of the office?

Answer. Some of the books of the office were in a fair condition. The medical department I did not examine. But many papers, letters, files, and general business received at the office was rather confused and mixed up, and it was difficult to find what we wanted. I found a drawer full of papers referred there of various dates for action, but on which I could not find that any action had ever been taken; some of them a few days old, some a few months, and even a year old, lying in a drawer together—no order about them. It was difficult to refer to any particular one if I was called upon by any party for information.

Question. Where were these papers from, which you found in the drawer?

Answer. They were, generally speaking, from superior officers—the acting assistant provost marshal general or the Provost Marshal General in Washington. I do not remember precisely where they all came from.

Question. Was there any draft in that district after you came there?

Answer. I gave notice very soon afterwards that there would be no draft, and stopped recruiting.

Question. Do you know why there was no draft?

Answer. Because the quota was regarded as full, or nearly full.

A paper was here shown to witness.

Question. Look at that paper and say whether you ever saw the original, of which that is a copy?

Answer. Yes, sir; I had that paper published in the Utica papers.

General JEFFRIES. I want to show that there were frauds committed at the provost marshal's office of the 21st district of New York. I propose to show that Captain Crandall has certified to a great many men that were never in the service; that whereas only 969 men were enlisted, they have paid 1,148 men an average of \$600 or \$700 apiece upon fraudulent certificates. I propose to show that they were notified by Major Haddock on the 12th day of March, which notice they received on the 14th of March, that the quota was about full and that no draft would be made, and this paper is an order from Major Haddock, the acting assistant provost marshal general of the State at that time, to this officer, (Major Beadle, the witness,) who was acting provost marshal, directing him to publish it to the people in the district, notifying them that there would be no draft.

The paper was here offered in evidence, the question of its admissibility to be decided hereafter.

Question. Did you remain on duty until the offices in that division were closed?

Answer. Until my office was closed. I was directed to close my office and dispose of the effects on the 15th day of October, which I did, and the records, &c., were all removed to the Syracuse office.

Question. Do you know how many men were credited to the Utica district under the call of December 19, 1864?

Answer. I think the number was 964. I do not remember any others we received except for regular recruits. Five recruits for the regular army were enlisted in August, making 969.

Question. Is 969 the number of recruits credited which the records of that office shows under this call?

Answer. Yes, sir; that was the number. I do not think that any were added before I arrived.

Question. If any other certificates of credits exist for that district they are fraudulent, are they not?

Answer. I should think so.

Question. What do you know, if anything, in regard to other claims for credits that were presented to you for your allowance?

Answer. Very soon after my arrival at Utica there was mention made of claims that Oneida county had for credits, principally for enlistments outside of the district. I was shown, very soon after my arrival there, a few papers that appeared to be certificates of muster, some signed by a General Littlefield, at Port Royal, South Carolina; others by some captain, a recruiting officer at Newbern, North Carolina; and some by Commander Young, and other naval officers in New York. There were a variety of papers from different officers that appeared to be certificates of muster in, upon which they claimed additional credits.

Question. What was the proper channel to communicate to you the credits of the district of men not enlisted in the office?

Answer. Credits for men not enlisted in the office were communicated to the provost marshal of the district through the acting assistant provost marshal general, or by him. All that I received came in that way.

Question. State whether any claims were presented to you for credits for outside musters.

Answer. The papers we have spoken of were the only ones. There was a request published by me early in March that some gentleman of the board of supervisors should call on me, that we might consider these matters and arrange for having the matter settled; and several gentlemen of the board of supervisors called at my office and we talked the matter over, and it was concluded, for some reason I do not recollect, not to do anything about it then. It was spoken of afterwards, and I offered to go with a committee of the board of supervisors to Elmira to aid in settling the claims based upon these papers. After a time the papers were brought into my office and left there by a gentleman connected with the business.

Question. Who was it?

Answer. Thomas Buchanan. He is connected with a savings bank in Utica, I think.

Question. What were they left for?

Answer. I do not remember any specific reason why they were left there. I was asked once to take them to Washington and get them allowed. I told them it was impossible for me to do so without special permission from the Secretary of War. I advised them to take the papers to Washington themselves.

Question. Was that before or after the trial of Major Haddock?

Answer. I think Mr. Buchanan left them in my office before the completion of Major Haddock's trial.

Question. When was it that he requested you to take them to Elmira; was it before or after the trial of Major Haddock?

Answer. It is my opinion that it was after the trial, though it might have been just before its close.

Question. How many men were enlisted or mustered into the service at

Utica—that is, how many “inside” recruits, as distinguished from “outside” recruits, under the call of December 19, 1864?

Answer. About seven hundred and forty-one, I think.

Question. What comprises the 21st congressional district of New York?

Answer. The county of Oneida, which is subdivided into some thirty-five towns; that is, considering wards as towns.

Question. How many sub-districts are there in that district for the purpose of the draft?

Answer. Forty sub-districts.

Question. Were you a witness on the trial of Major Haddock, who was tried by court-martial?

Answer. I was a witness.

Question. How did you happen to be a witness in that case?

Answer. I was summoned by the judge advocate of the court.

Question. Whose name was to the summons?

Answer. Hon. Roscoe Conkling's.

Question. Have you got that summons?

Answer. No, sir; I have not. It was filed as a voucher to an account for mileage, &c.

Question. Were your expenses paid on that voucher?

Answer. They have never been paid, and I have never been able to collect them.

Question. Who acted as counsel for the accused in that case?

Answer. Colonel George J. Woodward, of the Veteran Reserve Corps, and George W. Smith.

Question. Who represented the government on that trial as judge advocate?

Answer. Hon. Roscoe Conkling.

Question. Were you ever present when the court was cleared for deliberation?

Answer. Yes, sir.

Mr. CONKLING objected to this style of examination.

General JEFFRIES said he proposed to prove by the witness on the stand that Hon. Roscoe Conkling remained in the court-room during the deliberations of the court when counsel were compelled to retire.

The committee ruled out the proposed evidence on the ground of the facts to which it would be relevant being substantially embraced in the written statement of Mr. Conkling.

Question. During the time you were performing the duties of provost marshal of the 21st district what was P. B. Crandall doing?

Answer. His occupation was that of farmer, I understood. He was in my office from time to time on business.

Question. What official position did he hold during that time?

Answer. He was part of that time recognized as clerk of the board of supervisors; whether all the time or not I am not certain. He was also holding his commission as provost marshal until a date after I went there.

Question. What part of this time was he clerk of the board of supervisors?

Answer. I do not know but what he was all the time. I think he was all the time. I saw his name in the papers at various times advertising for proposals.

Question. Who was clerk of the board of supervisors when you entered upon your duties as provost marshal?

Answer. I understood Mr. Crandall was the clerk.

Question. State what, if any, applications he made to you as such for credits for the twenty-first district.

Answer. He made application to me—whether in his official position as clerk or not I do not know; but he made application in company with others, asking information and inquiring generally about the condition of the credits, what

number had been received, &c., and a conversation was held between him and myself in reference to procuring others.

Question. What claim, if any, did he ever present to you for any particular credit or class of credits?

Answer. The only class of credits for which he and others ever made inquiry about are those which I have heretofore mentioned: Certificates of muster of General Littlefield and Commander Young, and others for men enlisted outside the district.

Question. What information, if any, did he give as to the validity of the Littlefield credits?

Answer. He considered them good, genuine claims for credits.

Question. What, if anything, did he say to you to induce you to allow the credits?

Answer. He must have known that I could not allow them. I do not think he ever applied to me to allow the credits by my own act. He never said very much to me about the papers. They lay in my office for a long time without any attention being paid to them, and the question was not discussed to any extent. After some time had elapsed—perhaps two or three weeks, or a month—the question was brought up again.

Question. What was the quota of the 21st district of New York under the call of December 19, deducting the 25 per cent. which was conditionally set aside by the President?

Mr. Conkling objected:

MAY 25, 1866.

Examination of General W. H. H. BEADLE continued:

General JEFFRIES. I wish to show by this witness that the reputation of the provost marshal's office at Utica, New York, was bad; that it was the resort of "bounty-jumpers" from New York city and other places; also the fact that, under the administration of Captain Richardson and Captain P. B. Crandall, it was notorious that "bounty-jumpers" and deserters could be enlisted at that office; that this reputation extended to New York city, Buffalo, and elsewhere, in the State of New York.

The CHAIRMAN. All that portion of the offer of evidence to be established by general reputation is rejected as inadmissible; but any facts established by positive testimony, showing fraud, may be given in evidence, provided knowledge or notice of that fraud is traced to Mr. Conkling.

By General JEFFRIES:

Question. Look at that order (showing witness exhibit W. W. No. 22, being Special Order No. 23, headquarters department of New York, March 25, 1864,) and say if it is a copy of an order that was received at the office of the provost marshal at Utica, N. Y., and was on file in that office when you entered on your duties there as provost marshal at Utica.

Answer. Yes, sir; I recognize that as a copy of an official printed order that was on file among the papers of that office.

Question. I want you to state to the committee whether you knew Aaron Richardson, a "bounty broker" of Utica.

Answer. I did. I knew Aaron Richardson. By some he was termed one thing and by some another.

Question. State whether during your administration he was arrested.

Answer. Yes, sir; I arrested him almost immediately after taking charge of the office.

By Mr. BOYER:

Question. About what date was this?

Answer. March 15, 1865.

By General JEFFRIES :

Question. Who did he send for when he was arrested ?

Answer. He did not send for any one that I remember of.

Question. What do you know, if anything, about any person being sent for to visit Mr. Richardson while he was in custody ?

Answer. I do not know of anything.

Question. In whose custody was Mr. Richardson while in arrest on that occasion ?

Answer. Officially he was in my custody, but he was guarded by two or three persons, one at a time, employed by me under authority of the government; two persons named Cole and one named Fergusson.

Question. Do you remember the names of those persons, other than Cole and Fergusson ?

Answer. One was named Samuel Cole, another Robert Fergusson, and another Abram Cole.

Question. Do you, of your own knowledge, know of the fact that Mr. Conkling visited Richardson while in custody ?

Answer. No, sir; I do not.

Question. What did you ever hear Mr. Conkling say on that subject, if anything—the subject of his having visited Richardson while in custody ?

Answer. I don't remember anything. Possibly I may have heard something, but do not think I did.

Question. I want to ask you whether or not, upon your taking possession of the office, relieving Captain Crandall, you found any enlistment or muster papers or certificates signed in blank in the office ?

Mr. HOTCHKISS objected to the question, and wished to know what could be proved by it.

General JEFFRIES. I purpose to establish that as one of the irregularities of that office, by means of which a dishonest man could commit fraud.

The CHAIRMAN. Do you purpose to prove that Mr. Conkling had knowledge of these irregularities ?

General JEFFRIES. I do not know that I do.

Objection sustained.

Mr. HOTCHKISS objected to the testimony of this witness as not pertinent to the questions under investigation.

The objection was overruled by the committee.

MONDAY, *May* 28, 1866.

Major W. H. H. BEADLE appeared, and his examination was continued :

By General JEFFRIES :

Question. Look at these books; (exhibiting two books—one entitled "Vouchers paid," and the other entitled "Cash-book, provost marshal's office, twenty-first district, New York;") what do you know of these books in connexion with Mr. Conkling ?

Answer. While acting as provost marshal of the twenty-first district of New York, I received a note from Mr. Conkling to bring these books with me to the court where I was to attend as a witness—the court-martial at Syracuse. I took one of the books with me, which I found not to be the one desired. These books are books of record of the provost marshal's office for the twenty-first district of New York; are used principally for the date of the bounties received by different recruits in the district, and a record of the places to where the recruits are ordered. They are somewhat different in their character, but both relate to the same general purpose.

Question. What bounty do they relate to ?

Answer. Local bounty; that paid by the local authorities.

Question. State if you took those books to Mr. Conkling.

Answer. I took one of them, and, finding it was not the book desired, I telegraphed my clerk, who brought the other with him.

Question. In pursuance to what regulation or order were these books made up? (Objected to, and objection overruled.)

Answer. They were made in pursuance to an order from the acting assistant provost marshal general, western division, New York; that was on file in the office, and these books were also on file in the office. They were kept by me, in compliance with that order.

Question. Look at this order, (Exhibit No. 8,) circular No. 8, headquarters acting assistant provost marshal general, western division, New York; do you identify this order as the order you have referred to?

Answer. Yes, sir.

General FRY. I offer the books as evidence at this point—such portions as show that the recruits received less bounty than they were entitled to receive at the times for which they appear to have been enlisted.

(Objected to, and objection overruled.)

Question. When did you first see these books?

Answer. On the 13th of March, 1865. I went over all the principal books on that day. I examined them more accurately on the 14th, 15th, and 16th.

Question. Look at pages 8 and 10 of this book, and tell whether these erasures that now appear existed at that time.

(Objected to, and objection sustained.)

Question. In whose handwriting is that on pages 8, 9, and 10?

Answer. It is the handwriting of the clerk, William Wright, I think, entirely, as far as the regular writing is concerned. I don't notice any that is not his.

Question. Who was he?

Answer. He was a clerk whom I found employed there when I entered upon my duties, and whom I continued there for some time.

Question. Were there any other books in your office on this subject than these two; I refer to books kept in pursuance of circular No. 8?

Answer. No, sir; I believe not.

Question. What portion of this record did you keep? Where did you commence?

Answer. I commenced at the entry dated March 14, 1865, the first entry of that date. The page is unnumbered.

Question. What do the figures opposite that entry, or contained in that entry, represent in figures, 400?

(Objected to, and objection overruled.)

Answer. Those entries were made under my direction, in compliance with circular No. 8, already mentioned, as representing the amount of local bounty paid into my hands, as provost marshal, for the recruit.

Question. State in whose handwriting are the entries in this book entitled "cash-book, provost marshal's office, 21st district, N. Y.?"

Answer. William Wright's, clerk in my office.

Question. At the time you arrested Aaron Richardson, where did you go with him?

Answer. I accompanied him to the office of Mr. Conkling, in Utica.

Cross-examined.

By Mr. HOTCHKISS:

Question. You were examined on the trial of Major Haddock?

Answer. I was.

Question. Very fully?

Answer. I presume it may be so said.

Question. Will you state to me one particular, confining yourself to that, in which you found Captain Crandall's office in improper order?

Answer. Well, generally.

Question. I don't want a general statement by way of description, but I want you to specify any one particular.

Answer. I saw in that office blank enlistment and enrolment papers signed by one or more members of the board of en——

Question. Stop; I am confining my question to Captain Randall alone.

Answer. That was in particular that I mentioned.

Question. Do you testify that you found any enlistment papers in blank signed by Captain Crandall?

Answer. No, sir.

Question. Do you testify that you found blank enlistment papers signed by any other person? and if so, name them.

Answer. By the surgeon of the board of enrolment, Babcock; I have forgotten his initials.

Question. Do you speak of one paper?

Answer. Two or three; I have forgotten the exact number. There were more than one.

Question. What paper was it? Describe it so that we shall know what paper you mean.

Answer. There were several. I am of opinion it was the blank used for volunteer recruits.

Question. Containing a surgeon's certificate?

Answer. Yes, sir.

Question. And do you mean that was the paper that Babcock signed as surgeon?

Answer. Yes, sir; it was signed in the place for the surgeon.

Question. How many of those do you swear you found?

Answer. I don't recollect; more than one.

Question. More than two?

Answer. I am not certain there were more than two. Did not look carefully for more.

Question. Where did you find those two?

Answer. On the second floor. They were lying in a pile of other papers, rather loosely.

Question. Do you testify that they were not filled up at all—that they had no part of them filled up?

Answer. No part of them except the name and rank of the surgeon.

Question. What else was there to fill?

Answer. The name of the recruit, date, &c. They were not in.

Question. Did you know for whom these two papers had been signed?

Answer. Never knew.

Question. Ever inquire into it?

Answer. Not at all.

Question. Why didn't you?

Answer. It was a matter which was then being inquired into. It was not my right.

Question. Have you any knowledge that those papers were not properly and regularly signed in the cases of some men, to be filled up afterwards?

Answer. Not from my first knowledge as a witness.

Question. Can you specify any other particular in which Captain Crandall's business was in improper order or out of order?

Answer. Yes, sir. It was difficult for me to find——

Question. I don't want any general description.

Answer. I found the account of Mrs. Hanly.

Question. Is that account on either of these books?

Answer. I do not remember.

Question. Let us see where her account is in disorder on these books.

Answer. (Witness referring to the entry in the book.) This entry was made by me or by my direction: "Paid to his wife, \$600."

Question. Show me what you found in disorder.

Answer. I found this book lacking that order.

Question. Do you mean to say that you found anything in disorder as to the account of the man you speak of as John Hanly?

Answer. It was in this disorder, that I could not tell anything about it by the books of my office.

Question. Did you find the entry of the enlistment of her husband?

Answer. Yes, sir.

Question. But not on either of these books that you brought here?

Answer. Not that I remember.

Question. Did you pay to Mrs. Hanly the money for her husband?

Answer. Yes, sir; I did.

Question. How much?

Answer. Six hundred dollars.

Question. By what authority?

Answer. The statement of Captain Crandall that so much money had been left on his hands.

Question. Under what authority did you pay it to her in place of sending it forward?

Answer. By authority of the camp of distribution, and from my particular understanding that that was the arrangement.

Question. Did you have any doubt that you were doing your duty as an officer in paying it?

Answer. No, sir; I did not. I never had any doubt of that in the world.

Question. Was there any difficulty in getting at the matter with Mrs. Hanly in the fact that six hundred dollars had been paid?

Answer. Not since I saw the captain.

Question. What is this order that you speak of that you did not find by looking at the books?

Answer. I did not find the amount of his bounty entered on the books.

Question. Do you mean to testify that the amount of his bounty was not entered, or that you could not find it?

Answer. I could not find it.

By the CHAIRMAN:

Question. Was the amount of the bounty that was paid the soldier entered before the amount was actually paid to the soldier on those books, or when the payment was made?

Answer. When the recruit was enlisted the amount paid into the hands of the provost marshal was entered into the column. Afterwards, when that was disbursed by the provost marshal, it was entered into the column "How disbursed." The recruit was not entitled to receive the money into his hands.

Question. Do you say that the amount of money which was received for the recruit was not entered on the books?

Answer. It was entered on the books when he was first enlisted.

Question. The amount that was not entered was simply the amount paid?

Answer. I don't know what the amount was.

Question. Whether the sum which was wanting was the amount which was deposited for the recruit, or the amount of payment made to the recruit?

Answer. The recruit was enlisted and mustered in by the provost marshal. A previous arrangement had been made by the party presenting him, as to the

bounty he should be credited. Then, upon his muster in, the party presenting him paid into the hands of the provost marshal a stipulated sum. This was retained by the provost marshal and disposed of by him as the rules might direct, part paid to the recruit or part forwarded to the rendezvous, as the case might be, or as the officer had confidence in the recruit.

Question. You say there was an account on the book in this particular case. Was that omission the omission of the amount of money received for him, or the omission of the amount of money paid to him?

Answer. It was the omission of the amount of money received for him.

By Mr. HOTCHKISS:

Question. Do you mean to testify that there was an account on the books of the amount received for him? Do you mean to say that these books did not show to a cent the amount received for him?

Answer. What I mean to say is that I could not find it.

Question. The day you reached that office did not Captain Crandall show you an account, a copy of which this is? (Showing witness papers.)

Answer. I do not remember. I think there was something of that kind handed to me, which I glanced rapidly at.

Question. Did you say that Captain Crandall, the day you reached there, did not show you an account that had this man's name upon it, with the amount, and called your attention to it?

Answer. I think likely he did, along with a lot of other business and other names, and that name possibly was among them.

Question. Do you deny that he called your attention that day, separately and specifically, to that Mrs. John Hanly, and showed you the account?

Answer. I do not deny it.

Question. Will you look on these books, and tell me whether, in the writing of William Wright, and on that day, the name of Hanly appeared?

Answer. I cannot, simply from the fact that I was entering the office, and it was the first day, and was unacquainted.

Question. Do you, as an officer and a gentleman, hold yourself acquitted, in coming here and putting yourself in testimony on the record, when you made no exertion sufficient in examining the truth?

Answer. I do. I would like to state that there have been seven or eight months since I looked at the books, and when you pressed me for a question I simply remembered that name of John Hanly.

Question. How long have you been in this city?

Answer. Since Wednesday, 11 o'clock.

Question. Where have you been staying?

Answer. At the National Hotel.

Question. How often have you been to General Fry's office?

Answer. Twice.

Question. With whom?

Answer. Was alone.

Question. Who did you see there?

Answer. Saw General Fry, General Jeffries, Major Scott, and the chief clerk, and perhaps General McIver.

Question. Have you, at the National Hotel, conferred with George W. Smith upon this subject?

Answer. No, sir, to no extent. Have seen him several times.

Question. Have you been to his room?

Answer. He was in my room once.

Question. You have talked this matter over?

Answer. Have not scarcely at all.

Question. Have you not taken considerable interest in this matter, and made

yourself very active in trying to make some case—in trying to show that Crandall was to blame?

Answer. No, sir.

Question. Did you not evince so much heat and passion in your testimony that you came back and made a public apology to the court?

Answer. Not for passion.

Question. Did you for the mistakes you had made in your testimony?

Answer. For failure to answer certain questions as promptly as you required. I stated my reasons for not doing it.

Question. Will you put your finger now upon another thing which you will swear to, that you found any disorder or short-coming of Captain Crandall in that office?

Answer. I cannot.

Question. I want you to take time and think, and collect yourself, and state whether you find anything in particular that was irregular?

Answer. I saw a certain telegram not where it should be.

Question. Where should it have been?

Answer. It should have been with the file of telegrams.

Question. Where was it?

Answer. It was lying loosely upon the table mixed up with other papers.

Question. What day was that?

Answer. On the 14th.

Question. You cannot tell what telegram it was, nor whether it was of any consequence or not?

Answer. No, sir.

Question. Do you know whether any duplicate had been received by mail?

Answer. No, sir.

Question. Can you specify another thing, however minute, in which you detected a short-coming?

Answer. When I first went to the office——

Question. Never—I want you to answer my question.

Answer. I want to answer it as faithfully as I can. When I first went to the office——

Question. I decline to take that as an answer. Did you at any time discover anything, however minute, in which there was a short-coming, however slight?

Answer. I am unable to be so specific in my statements. I wish to state in my explanation that I am called upon, after fourteen months' time has elapsed, to give specific statements as to irregularities in entries upon books, minute accounts, telegrams, letters, circulars, and other facts common to a provost marshal's office, to justify a statement made by me that the entire office was irregular and confused.

Question. Do you feel now justified in bringing charges upon Captain Crandall for an omission which turns out clearly to be your own fault, and nobody's else, as you admit?

Answer. I am sorry I made the mistake in trying to depend upon my memory of a specific fact wherein I was mistaken.

Question. Did you feel justified in your testimony?

Answer. I do not know.

Question. I ask you this general question now: Do you now testify that there was anything which you can state in which Captain Crandall had committed any irregularity or short-coming?

Answer. I do not know. I will explain that while in the office with Captain Crandall I saw very little of his official acts, and made no investigations, as other officers were sent there for that purpose.

Question. Were all the records and property of the provost marshal's office turned over to you?

Answer. All the records and property were, so far as I know.

Question. Do you mean to be understood that the credits which were brought to you by Mr. Buchanan and others, and which were claimed for the twenty-first district, had anything connected with them different from all such claims in the different districts for enlistments which took place outside of the district?

Answer. I never said there was any difference.

Question. Those were certificates of muster-rolls, so called?

Answer. Yes, sir; certificates of muster or muster-in rolls, which are equivalent.

Question. And the sole question was, whether the district was entitled to those credits in addition to such as had already come to you through the office of the acting provost marshal general?

Answer. That was the question.

Question. There was no other question presented to you?

Answer. No, sir.

Question. You said that the quota of the twenty-first district, which there was some doubt about, was 1,044 under a new call. What did you mean by there being some doubt about it?

Answer. Did I use the word doubt? If I did, it was on the account of the fact that I found in the record the file of correspondence in the office—an assignment, officially, of another quota.

Question. How much was the other quota that you found assigned?

Answer. I have forgotten.

Question. Over 1,200?

Answer. No; the official count was two or three hundred.

Question. You refer to the one that was 273?

Answer. Yes, sir.

Question. Do you also find another assignment in this hand, which was that it was over 1,200?

Answer. Yes, sir.

Question. Did you also see any telegram that it was 800, and did you see and examine it on the Haddock trial?

Answer. Yes; it was a large number, over 2,000.

Question. Then you say that the real quota, deducting the 25 per cent., was 723?

Answer. Yes, sir.

Question. That quota for the twenty-first district was stated at 1,200, 273, 800, 2,000, and 783?

Answer. Yes, sir; but the 783 and the 1,044 were one and the same.

Question. Now, I ask you what was the quota, in truth, that you acted upon, and carried along until the next August; was it 1,044 or 783?

Answer. It is difficult for me to remember which from which.

Question. Do you remember that you were expressly ordered not to allow the 25 per cent., and to insist upon the full quota of 1,044?

Answer. I was.

Question. Therefore it was erroneous to state that the quota acted upon was 783?

Answer. I am not able to reply.

Question. I ask you whether it is not an error to state that the quota acted upon was 783—finally acted upon?

Answer. It was, finally.

Question. I ask you whether 1,044 was not the quota finally acted upon and insisted upon in that district?

Answer. It was, for certain purposes.

Question. The only doubt that there was about that quota was the allowance or deduction of 25 per cent.?

Answer. Yes, sir.

Question. Did that order come from General Fry?

Answer. I have forgotten, positively; my recollection is that it did—through Major Hayman.

Question. What day did you say you got an order not to draft under that call?

Answer. I have now forgotten the date, but it was very early after my arrival—not a week after. I received verbal orders not to draft on my way there.

Question. At what time do you say those books were carried to the Haddock court-martial?

Answer. I think in May; am not certain.

Question. Where did you take them, to Elmira or Syracuse? I am speaking of the time when you showed them to Mr. Conkling.

Answer. It was to Syracuse, in mid-summer.

Question. Do you say that Mr. Conkling ever looked at those books?

Answer. I never saw you look at them more than like this this morning.

Question. Do you mean that Mr. Conkling ever had them in his actual possession one moment to look at them or anything else?

Answer. I took them to his room—to the Syracuse House.

Question. Do you say that you showed them to Mr. Conkling there?

Answer. No, sir.

Question. Do you mean Mr. Conkling ever saw the inside of those books?

Answer. Yes, sir; whether to read them or not I do not know.

Question. Did you mean that he ever saw them to read them?

Answer. Not to my knowledge.

Question. Do you know George W. Smith?

Answer. Yes, sir.

Question. He acted as your counsel in some provost marshal matters?

Answer. Yes, sir; once.

Question. Did you bring a letter of introduction to him?

Answer. No, sir; I did not.

Question. Did you bring from Mr. Haddock a letter of introduction to Mr. Clark?

Answer. I bore a sealed letter to him.

Question. Did you reinstate Benjamin H. Clark in your office?

Answer. I did.

Question. Did you know that he had been dismissed for delinquencies?

Answer. No, sir.

Question. Did you know that?

Answer. I did not.

Question. Did not Captain Crandall tell you about them?

Answer. He told me of no delinquencies to my recollection.

Question. Did he tell you he had been dismissed?

(Objected to, and objection overruled.)

Answer. Don't remember him telling me so.

Question. Did Major Haddock recommend to you to re-employ Clark?

Answer. He did.

Question. Did you understand he had been dismissed the office on charges?

Answer. No, sir; I did not.

Question. You say you came with Richardson to Mr. Conkling's office?

Answer. Yes, sir.

Question. Do you remember the persons present?

Answer. Ferguson went along with me; another gentleman in his office.

Question. Was it in the presence of all the clerks in his office?

Answer. Yes, sir.

Question. About how many?

Answer. Two besides himself.

Question. Was he in his office when you came in?

Answer. No, sir; not in the principal room; some other room.

Question. Do you recollect his coming into the office?

Answer. Yes, sir.

Question. Did you disclose to him what you came there for?

Answer. I cannot give the exact words, but I said something to him, the substance of which was, that I did not wish Mr. Richardson to have any communication with anybody upon the subject of quotas and credits, or paying men to the credit of certain towns, counties, &c. That was about all I said.

Question. Do you recollect anything that Mr. Conkling said or did?

Answer. He replied to me some way dismissing it—that you had nothing to do with it.

Question. Do you remember his stating to you that he had nothing to do with Mr. Richardson—not in the way of advice or suggestions on the subject?

Answer. I do not recollect.

Question. How full do you think the statement was? Did not he say to you, in presence of Richardson and the others, that he declined to make any suggestions to you or to any one else in regard to Richardson or his arrest; and that he had nothing whatever to do with the matter?

Answer. In substance, but not so much at length.

Question. Did you know at that time that Smith, for one, and Haddock were endeavoring to create the impression that Mr. Conkling was, in some character, advising Richardson?

Answer. I was not.

Question. Was Aaron Richardson a witness on the Haddock court-martial?

Answer. Yes, sir.

Question. You read his testimony?

Answer. Yes, sir.

Question. Did the witness produce on that trial many letters, anonymous and others—private letters from Major Haddock?

(Objected to, and objection overruled.)

Answer. I so understood on the trial.

Question. You read the letters?

Answer. Yes, sir.

Question. Do you know whether Richardson was the principal witness against Haddock or not?

Answer. Yes, sir; he was regarded as the principal witness there.

Question. Do you know that Richardson claimed of Captain Crandall \$20,000 of bonds?

Answer. Yes, sir; I know it by the captain's statements, and by seeing the correspondence.

Question. Do you know that Crandall resisted that claim, and that Richardson or his assignee brought suit against Crandall?

Answer. Yes, sir.

Question. Do you know from the records that Mr. Conkling made representations to the government, and gave aid in the matter of holding those bonds from Richardson?

Answer. I understood so—yes, sir; in connexion with the Hon. Ward Hunt.

Question. You discharged Richardson from arrest?

Answer. Yes, sir.

Question. Did you arrest him again and discharge him the second time?

Answer. Yes, sir.

Question. Did Mr. Conkling have anything to do with your discharging him?

Answer. No, sir.

Question. Did he have anything to do with it in any way?

Answer. No, sir; nothing whatever.

By Mr. JEFFRIES:

Question. You have testified, in reply to Mr. Conkling's question, that Aaron Richardson was the principal witness on the trial of Major Haddock; state whether the same information, or information of the same nature, which informed you that Aaron Richardson was the principal witness, also informed you that he was impeached by the testimony of a large number of witnesses?

(Objected to, and the objection sustained, the chairman stating that he did not consider the question whether Richardson was the principal witness a competent one, and would have overruled it had he known it was objected to.)

Question. Mr. Conkling has called your attention to the matter of \$20,000 bonds in the hands of Crandall. I wish you would give to the committee the information you have on that subject, as connected with the bonds.

Answer. It is all the information, except a very few papers I have seen in the hands of Captain Crandall, which I cannot now specify.

Question. Did Captain Crandall inform you that the Hon. Roscoe Conkling had advised him not to obey the order directing him not to turn over the money to the United States?

(Objected to, and objection overruled.)

Answer. Not in my memory.

Question. Did Captain Crandall show you any letter or paper, signed by Mr. Conkling, during the conversation to which you have testified in reply to a question of Mr. Conkling, on your cross-examination, or any paper which Captain Crandall said was from Mr. Conkling, objecting to Crandall's turning over the money in question?

(Objected to. The chairman ruled that the witness may answer the question so far as it relates to the part of the conversation referred to in his previous answer.)

Answer. No, sir, not that I remember.

Question. What did you remark to the chairman of the committee on the subject of seeing in Crandall's possession a letter or memorandum advising him not to turn over the money as ordered?

(Objected to, and objection sustained.)

Question. How did you learn the fact of Mr. Conkling giving aid to the government in withholding the bonds from Richardson?

Answer. I learned it in a conversation with Captain Crandall, not far from March 20, 1865. He gave me his reasons why he could not safely turn over certain bonds to the government; and he referred me to an opinion of the Hon. Ward Hunt, that if he did turn over these bonds to the United States he would be responsible for them, and, therefore, he could not turn them over. Among other things he mentioned something in reference to Mr. Conkling which is now indefinite in my mind, but which refers to an assistance to the War Department in having the question settled.

Question. State whether in that conversation you demanded the bonds as the officer who relieved him.

Answer. I demanded of him the bonds all the time officially.

Question. Did you present those orders to him?

Answer. Yes, sir; he had a copy in his possession.

Question. Did he turn them over to you?

Answer. No.

Question. What was your position at that time?

Answer. Acting provost marshal 21st district of New York.

Question. Did he ever turn the bonds over to you?

Answer. Never.

Question. Can you repeat, if anything, what he said in that conversation as regards the Hon. Ward Hunt and the Hon. Roscoe Conkling advising him against turning over the bonds to the United States?

Answer. I cannot give his words to me. I believe the captain gave me a copy of a legal opinion of the Hon. Ward Hunt. He said that he had received this legal opinion advising him that if he turned over these bonds he was personally liable to the parties claiming them before the civil courts of New York, and for that reason he did not feel justified in turning them over. He stated that the matter was being represented to the War Department direct; that Hon. Roscoe Conkling was aiding in that representation, and that he expected the matter to be finally settled by that means.

Question. What did Crandall say, if anything, in that conversation, or any other conversation you have referred to in answering Mr. Conkling's questions as to the purpose for which these bonds were deposited with him?

Answer. He told me they were a guarantee against desertion of recruits presented by Aaron Richardson.

Question. What further, if anything, did he say about that?

Answer. There was more said; of course the subject was developed, but I do not now recollect the particulars. Security from men who had enlisted at small bounty was one thing mentioned.

Question. How much bounty did he say these men had received for whom this money was deposited?

Answer. It was well understood that the enlistments were for fifty dollars, generally; sometimes nothing.

Question. What did he say as to other parties who enlisted for \$50, when the bounty they were actually getting was from \$400 to \$700?

Answer. I did not demand of him a very strict answer to that; but we talked upon it some. He showed me a telegram from Major Haddock, assistant provost marshal general, indorsing his action in having mustered in 17 men for \$50, approving it under his explanation, which he had forwarded personally; and he also told me that the recruits did not want any larger bounty than that \$50, or anything, as the case might be.

Question. What did he say the whole local bounty, town and county, was at that time?

Answer. We mentioned the amount of the county to be——

(Objected to for the reason that the whole subject is a matter of record in the action of the board of supervisors.)

Question. You speak of Judge Smith as being your counsel, in reply to Mr. Conkling's questions. State what that was about.

Answer. There was a man in Buffalo who brought suit against me in the supreme court for a bounty which he claimed due him for a party enlisted by Captain Crandall. I sent Judge Smith to defend me.

By Mr. HOTCHKISS:

Question. Is it true that the question was whether the order upon Captain Crandall to turn over included these bonds, or was broad enough to take in bonds deposited under the circumstances that these were, and was that what Mr. Hunt's opinion related to?

Answer. Yes, sir, and the additional fact that he would be personally responsible.

Question. And upon that Mr. Hunt advised him he was not to turn them over under that order?

Answer. That he was not legally protected in doing so.

Question. Did Captain Crandall show you a written legal opinion on the subject?

Answer. Yes, sir.

Question. Did you learn, while you were there, Mr. Hunt's profession and position?

Answer. Yes, sir.

Question. He is a distinguished lawyer of New York?

Answer. Yes.

Question. Judge in that State?

Answer. Yes.

Question. Man of high standing?

Answer. Yes, sir.

Question. Was there any business connexion that you know of between Mr. Hunt and Mr. Conkling?

Answer. None that I knew of.

Question. Did Captain Crandall state to you that Mr. Hunt would request to forward to the War Department opinions and statements on the subject?

Answer. I believe the substance of Captain Crandall's statement to me was, that Captain Crandall had made some statements in reference to the matter, which, together with Mr. Hunt's legal opinion, would be forwarded to the War Department by Mr. Conkling, and on the request of Mr. Hunt.

Question. You mentioned that you were not disposed to crowd the matter; that, I suppose, was for the reason that you saw this question?

Answer. Yes, sir; I thought there was a question in the matter, and was not disposed to crowd after I saw there was no danger of losing the bonds immediately.

Question. Did you also learn that the bonds had been seized on replevin suit, and had been by agreement deposited in the vault of a bank?

Answer. Yes, sir.

Question. Mr. Conkling never had anything to do with that suit?

Answer. Not so far as I know.

Question. Did Mr. Crandall, in a conversation, state to you that those bonds had been deposited, in addition to the bounty and outside of the bounty, upon the requirement as security against desertion?

Answer. Yes, sir.

Question. Did he insist upon his right to hold them for the government against the men who deposited them?

Answer. Yes.

Question. And the claim of the other man was that he had a right by law to—

Answer. That was as I understood it.

Question. Did Captain Crandall state to you, in substance, that in case of these men who took bounty rates less than the maximum amount, that he explained to them their rights in full, and that if the person with whom they went was not paying them enough, that they could get more by taking the proper course and insisting upon a legitimate bounty?

Answer. He did tell me that.

Question. Did he also tell you that he required affidavits from all these men, with two others present identifying them, before he would muster them in?

Answer. I don't remember. He may have mentioned affidavits in certain cases, but don't remember whether he stated it in general.

Question. Did he state to you that he informed these men fully of all the facts and their rights before he mustered them in in every instance?

Answer. Yes, sir; I think he did.

Question. Did he tell you that if he found the men satisfied and physically qualified in all respects, that he had nothing to do except muster them in?

Answer. I cannot remember. I do not know whether he did or not.

Question. You did not muster any men for Oneida county while there?

Answer. No, sir.

Question. You mustered for different amounts ?

Answer. Yes, sir.

Question. And only by fixed rules by the action of the board of supervisors ?

Answer. Yes, sir.

Question. You mustered men for from \$300 to \$700 each, for from one to three years' service ?

Answer. Yes, sir.

Question. When Mr. Crandall claimed to retain the \$20,000 bonds, did he claim to retain it or any part of it in his own right, or only for the purpose of protecting himself from liability to those who might have a legal claim for the amount ?

Answer. He only claimed to retain it for a legal protection against suit in the courts of New York for recovering it from him by the parties who deposited the bonds with him.

TUESDAY, *May* 29, 1866.

Lieutenant JAMES L. LOTT sworn and examined :

By Mr. RIDDLE :

Question. State your name and rank.

Answer. James L. Lott, first lieutenant Veteran Reserve Corps.

Question. State whether you were in command of Camp Seward, near Auburn.

Answer. I was.

Question. At what time and how long ?

Answer. I got there on the 11th of February, and remained in command a little over a month.

Question. Was that a camp for recruits—a rendezvous ?

Answer. Yes, sir ; for the recruits of one regiment, the one hundred and thirty-ninth New York.

Question. State whether recruits were received from the twenty-first district—the Utica district of New York ?

Answer. Yes, sir.

Question. Are you the Lieutenant James L. Lott who made a report to Major John A. Haddock, assistant provost marshal western division of New York, March 4, 1864, dated headquarters, Camp Seward, western division, New York ?

Answer. I made the report to Major Haddock about that time.

THOMAS VAN EMBERGH sworn and examined :

By Mr. RIDDLE :

Question. State your name and residence ?

Answer. Thomas Van Embergh ; residence, Utica, New York.

The record of the Haddock court-martial was here placed in evidence—so much of it as deemed pertinent and material to this investigation to be referred to.

Question. State whether, during the time that Captain Crandall was provost marshal of that district, you was concerned in furnishing recruits to fill the quotas.

Answer. I was, together with Mr. Townsend.

Question. State whether you brought in at any time recruits for which you were required to make deposits ; and, if so, in what manner you complied with that regulation.

Answer. I complied with it in money and checks.

Question. State whether at any time you deposited checks upon a bank or banks in which you had no deposits, and that fact was known to Captain Crandall. Give a narrative of the transaction.

Answer. I don't know that there was anything said on this occasion. I had

previous to that done the same thing twice. At that time I stated to him that we had nothing in the bank—that Van Embergh and Townsend had not—but that we were good, and that we would see that it was all right; it was a matter of accommodation to us. Mr. Crandall was not very well acquainted with me at that time. He took the checks. It was regarded as a confidential thing between us—as an honorable, an accommodating thing between Mr. Crandall and ourselves. It was so regarded at the time, and has so been ever since.

Question. Will you state the amount of those checks—the amount for each man?

Answer. I think they were \$450 each man.

Question. Have you ever been called upon to pay any of those checks or any part of them?

Answer. No, sir. I think Mr. Crandall asked me what he should do with those checks at the time he was winding up, and I said to him, "the men deserted or were got out by government agents, and that we did not propose to pay it." He returned us the checks by our giving him the bonds which he holds, and also giving me a statement setting forth that the men were let out by these officers who came from Elmira, which I have at home. It was a thing we never wished to dodge.

Question. Who made that statement showing that those men escaped by the connivance of the government officers?

Answer. Mr. Crandall wrote the statement and signed it and gave it to me.

Cross-examination by Mr. HOTCHKISS:

Question. The Townsend you spoke of is Homer Townsend, of Utica?

Answer. Yes, sir.

Question. Is he a man of wealth—any real estate, or man of much property?

Answer. Yes, sir; \$10,000, or perhaps more; perhaps \$20,000.

Question. Does he own a good deal of real estate?

Answer. I know of some he owns.

Question. Is he a close business man?

Answer. Yes, very careful.

Question. Is there a man in Utica whose check for \$900 or \$1,000 is more certain?

Answer. No man is regarded better for what he is worth.

Question. Was your name also good, alone, for the amount of those checks?

Answer. It was.

Question. Did you and Townsend have funds in the bank individually?

Answer. I had a bank account at that time.

Question. Were you and Townsend partners in any way, except in the matters of putting in men?

Answer. No, sir.

Question. Townsend and Van Embergh had no partnership outside of that?

Answer. No, sir.

Question. And Townsend and Van Embergh jointly had no account or money in bank?

Answer. No, sir.

Question. Was this amount, \$450 each, outside of the bounty, and paid up as security against desertion?

Answer. It was over and above what the recruit was to have. It made double pay for us in case the man deserted.

Question. Did you ever see or hear of any order which required Captain Crandall, or any other provost marshal which required money to be paid up over and above the bounty?

Answer. I think Captain Crandall told me he was required to do this.

Question. Did you ever see the order that required him to do this?

Answer. I think not.

Question. Do you know that this thing which Captain Crandall did was a mode of precaution which he invented himself, in connexion with and at the suggestion of Mr. Hunt?

Answer. No, sir; I understood it to come from headquarters.

Question. Do you suppose that instead of acting on his own judgment he was acting from superior headquarters?

Answer. Yes, sir.

Question. Now, in depositing these checks with Captain Crandall, did you tell him that they were abundantly good, and that you and Townsend were abundantly good; was that the fact?

Answer. Yes, sir.

Question. Had you given him references to good men that he could inquire of?

Answer. I think I referred him to Mr. Hopkins.

Question. Mr. Hopkins was postmaster, and a large business man?

Answer. Yes, sir.

Question. Were these checks surrendered to you upon your giving a bond which was drawn by Hon. Ward Hunt?

Answer. I do not know who it was drawn by.

Question. Was the transaction consummated under the advice and direction of the Hon. Ward Hunt?

Answer. I do not know that it was.

Question. Who was Mr. Crandall's legal adviser?

Answer. I do not know, sir.

Question. Did you go to Mr. Huntington's office?

Answer. No, sir; I signed that document at the post office.

Question. What were the names of these two men for whom this was paid up; were their names Charles H. King and Thomas Smith?

Answer. I think those were the names.

Question. Was a man by the name of Sabine sent, as you understood, by Major Haddock?

Answer. I was told so.

Question. Was that man put in charge of the barracks?

Answer. I understood he was in charge; he brought men with him.

Question. Did Captain Crandall show you a letter from Major Haddock directing him to put that man Sabine in charge?

Answer. I think he did.

Question. State whether these two men were let out on the first night of Sabine's administration.

Answer. They were.

Question. How many other men did he let out that night?

Answer. I understood it was seven or nine.

Question. Did Captain Crandall tell you how many men were let out that night?

Answer. I think he told me it was seven or nine.

Question. These two men of yours were among them?

Answer. Yes, sir.

Question. Was that the ground on which you claimed you were not liable?

Answer. Yes, sir.

Question. And therefore you said that the men had not deserted themselves, and you were not liable on your check?

Answer. Yes, sir.

Question. Is that the ground on which you and Thompson gave the bond and took up these checks?

Answer. Yes.

Question. Was this man Sabine arrested by Captain Crandall and sent back to Elmira?

Answer. I saw him under arrest in the provost marshal's office. I understood he was sent back.

Question. Did you go to Captain Crandall next morning after those men were allowed to escape, and ask him whether he thought it was fair to hold those checks?

Answer. I did.

Question. Did he write and submit the matter to General Fry?

Answer. He told me he would.

Question. Did he ever state to you whether he was able to get any reply?

Answer. I do not know; I never saw any reply.

Question. Did he read the letter to you that he wrote to General Fry?

Answer. I do not recollect.

Question. Did he show it to you?

Answer. Not that I know of; he told me he would.

Question. Did you tell Captain Crandall that if, in consequence of those facts, the government held him responsible, you would pay the checks?

Answer. Yes, sir.

Question. State whether, on the part of you and Mr. Townsend, these checks and this transaction were in good faith and the honor of a man.

Answer. It was honorable and honest, far as I knew.

Question. Is this the bond you executed, and are these your and Mr. Townsend's signatures? (Showing witness a bond, of which the following is a copy:)

Received of P. P. Crandall, provost marshal 21st district of western New York, two checks for five hundred and fifty dollars each, drawn by T. Van Emburgh, February 10, 1865, on the Bank of Utica, which checks we gave to said Crandall as security against the desertion of Charles H. King and Thomas Smith. Now in consideration that said Crandall, at our request, has returned us the said checks, we agreeing with him and with the United States of America that, if we are now liable to the United States or any of its officers on said checks, or for the money represented thereby, we are and will remain equally liable, notwithstanding the delivery to us of the checks.

[Stamp, cancelled.]

T. VAN EMBURGH.
WILLIAM TOWNSEND.

APRIL 10, 1864.

Answer. Yes, sir; this is our bond and signatures.

Question. That bond was delivered to Captain Crandall?

Answer. Yes, sir. I signed it in his presence.

Question. Did you take the checks?

Answer. Yes, sir.

Question. Did you produce the checks on the trial of the Haddock court-martial?

Answer. I did.

Question. And were they annexed to the record?

Answer. They were.

Question. Was there any transaction with Crandall, or in which he was concerned, to your knowledge, which was not entirely correct and honest, as far as you know?

Answer. Nothing.

By Mr. RIDDLE:

Question. Have you any other knowledge of the desertion of these two recruits except that derived from Captain Crandall?

Answer. Captain Crandall and his own guards said the men had gone; that the barracks had been deserted by the officers a considerable length of time;

that there was no one in charge, and these men walked off with the others. This I learned from Crandall and the guards.

Question. What means have you of knowing that this was the first night after the arrival of the man Sabine?

Answer. I was in and out of the office all the while; saw his guards when he came; learned it that morning.

By Mr. CONKLING:

Question. Do you know that before the arrival of the guards sent from Elmira Captain Crandall had employed citizen guards?

Answer. I do.

Question. Had there been any desertions under that administration that you know of?

Answer. None that I know of.

Question. You stated that Crandall showed you a letter, or stated to you that he had received a letter, directing him to put those men in charge of the recruits of the barracks?

Answer. Yes. Such a letter was spoken of to me.

Question. Do you know that the citizen guards were dispensed with and the Elmira guards took charge?

Answer. Yes.

Question. You answered that you heard about the letting out of those men not only from Crandall but the other officers—from several of them?

Answer. One certain, and I think one other; but I am not positive. One went there and found the door open.

Question. Did you go down to the barracks yourself?

Answer. No, sir.

Question. Do you know whether Sabine was arrested by Captain Crandall?

Answer. I think he was. I saw him under arrest at the provost marshal's office the following morning.

Question. Do you know whether Captain Crandall himself discharged him again?

Answer. I do not.

Question. Do you know whether he was sent, or started to be sent, under arrest to another place from Utica?

Answer. I did not see him afterwards. I understood he was sent.

PETER CLOGHER sworn and examined.

By Mr. JEFFRIES:

Question. During January, February, and March, 1865, what official intercourse did you have with the board of supervisors of the county of Oneida, New York?

Answer. I was one of the supervisors of the board.

Question. Look at these books and tell the committee what they are.

Answer. One of these books seems to be the record of the annual session of the board of supervisors and the record of special meetings of the board, in printed form, authorized by the board; I believe they are genuine.

(The books severally are entitled "Journal of Proceedings of the Board of Supervisors of the county of Oneida, at their annual and special meetings, commencing at Utica, March 14, 1864, and at Rome, November 15, 1864." And "Journal of Proceedings of the Board of Supervisors of the county of Oneida, at a special meeting, May 16, 1865, at Utica, New York.")

Question. Upon what plan was the recruiting carried on at Utica under the call of December, —?

Answer. The board of supervisors, by its resolution, authorized the several supervisors to enlist men and fill their quotas.

Question. Were these resolutions published in the newspapers?

Answer. Yes, sir.

Question. Does Mr. Conkling live in Utica?

Answer. Yes, sir; he is a member of Congress from there.

MAY 30, 1866.

PATRICK J. KINNEY sworn and examined.

By Mr. RIDDLE:

Question. State your residence and employment in March, 1865.

Answer. I was living in Utica, and was clerk at Baggs's Hotel.

Question. State whether Aaron Richardson was arrested at that hotel in March, 1865.

Answer. Yes, sir; a couple of men came there and arrested him.

Question. What time was that arrest made?

Answer. They came there about five o'clock in the morning; I think the arrest was made at about half past five.

Question. Do you know whether any messenger was sent for Conkling or not upon his arrest? and if so, who went?

Answer. I went for Mr. Conkling.

Question. State where you found Mr. Conkling and what you said to him.

Answer. Mr. Conkling was in his room. I told him that Mr. Richardson wanted to see him, and that he was arrested. I came over to the hotel, and Mr. Conkling came over soon after. By this time they had come down from Mr. Richardson's room. When Mr. Conkling came over there they were behind the desk. Mr. Conkling spoke to one of the men who had arrested Richardson, and called the other and spoke with him, and Mr. Richardson went a short time and spoke with them, and after a few moments Mr. Conkling went away.

Question. When you speak of "these men," do you mean the men that arrested Mr. Richardson?

Answer. Yes, sir.

Question. Do you know whether or not Mr. Richardson was discharged from arrest?

(Objected to, and objection overruled.)

Answer. They did not do anything with him that I know of. The men went away and left Richardson there.

Cross-examination by Mr. CONKLING:

Question. Was that the morning the female seminary was burned?

Answer. I think it was.

Question. Had the fire just broken out as you met me at my door?

Answer. The bells had been ringing, I think; I saw some engines out.

Question. And were all the people just starting to the fire?

Answer. Persons were turning out some.

Question. The place where you told me that Richardson was arrested and wanted me to know it, was how far from Baggs's Hotel, where this occurred—just across the street and one house further on the cross street?

Answer. I think it was across Genesee street, and the second house on the other side.

Question. And Mr. Conkling then lived at the Dudley House?

Answer. Yes, sir.

Question. How long after you made this statement to Mr. Conkling did he stop at the hotel?

Answer. He came within fifteen or twenty minutes.

Question. And how many minutes do you say he was in the hotel altogether, from the time he came in until the time he went out?

Answer. Five minutes, I think. He only came in and just spoke with the men and went right out.

Question. Do you know that Richardson went right down to New York, where those men came from, immediately afterwards and reported?

Answer. I do not know how soon after; I met him in New York some time after.

Question. Do you know that within a few hours he went to New York?

Answer. I do not know. He often went away. I do not know the particular time.

Question. How soon after that did you meet him in New York?

Answer. A few days after. I met him in Wall street the day before the assassination of President Lincoln.

Question. What day was Richardson arrested?

Answer. I can't say.

Question. Did you receive this subpoena here? (Showing witness a subpoena.)

Answer. Yes, sir. I received it from the Sergeant-at-arms, I think.

Question. Where?

Answer. In the Sergeant-at-arms's office in this city.

Question. Was that the first time you were subpoenaed?

Answer. Yes, sir.

Question. Did you get a telegram from anybody?

Answer. I did.

Question. Have you that telegram?

(Witness produced two telegrams.)

Question. When did you come to this city?

Answer. Last Friday.

Question. Did you come in consequence of two telegrams that you received from anybody?

Answer. Yes, sir.

Question. And the first time that a subpoena was given you was here in this city in the Sergeant-at-arms's room?

Answer. Yes.

Question. Who went with you?

Answer. Nobody.

Question. Who suggested to you to go there?

Answer. I went to the Sergeant-at-arms's room immediately and told him where I stopped.

Question. Are these the telegrams you received?

Answer. Yes, sir.

(The telegrams were here put in evidence and were as follows :)

WASHINGTON, D. C., May 23, 1866, — p. m.

PATRICK J. KINNEY—Baggs's:

Please come to my office in Washington as witness.

JAMES B. FRY,
Provost Marshal General.

And

WASHINGTON, D. C. May 24, 1866.

P. J. KINNEY, Baggs's Hotel:

You are wanted immediately.

JAMES B. FRY,
Provost Marshal General.

Question. When you got to Washington did you go to see General Fry?

Answer. Yes, sir.

Question. How many times have you been to see him?

Answer. Twice.

Question. And in how many other places have you had conversations with him?

Answer. No other places.

Question. Did he inform you what he subpoenaed you here to testify in reference to?

Answer. No, sir.

Question. From whom did you first learn for what purpose you were brought here?

Answer. I learned it from what he said.

Question. Then you first learned it from General Fry and not Mr. Ennis?

Answer. I learned it from General Fry.

(Mr. CONKLING here stated to the committee that on the assembling of Congress on the first Monday of December, 1865, and the election of a Speaker, all the members of the House of Representatives qualified by swearing into office, and after that the members drew their pay from time to time upon the warrant of the Speaker, and that Mr. Conkling drew his as others did.)

JUNE 1, 1866.

Colonel B. TRACY sworn and examined.

By Mr. HOTCHKISS:

Question. In April, 1865, what rank and position did you hold?

Answer. Colonel of the 127th United States colored troops, commanding post at Elmira, New York.

Question. Was that camp a rendezvous?

Answer. It was in part. There was a prison camp also.

Question. Was there an assistant provost marshal general there?

Answer. There was; Major Haddock.

Question. Acting over what district?

Answer. Over western New York.

Question. Constituting how many congressional districts?

Answer. About fourteen; all west of Herkimer, including Oneida.

Question. Did you arrest him?

Answer. I did.

Question. On whose order?

Answer. On the order of the Assistant Secretary of War, Mr. Dana. I arrested him the day after the date of the order. I think the order was dated April 3.

Question. An order sent in cipher?

Answer. It was sent in cipher to New York, and from there by special messenger.

Question. Up to that time had he been suspended or relieved in any way of his administration?

Answer. Not to my knowledge. He was acting up to the time of the arrest. I arrested him in the performance of his duties, and took possession of his office.

Question. Did you furlough three men who had enlisted in the 21st district, upon his application?

Answer. I furloughed three men from that district upon a request of which this is a copy, (witness being shown a paper by Mr. Conkling.)

Question. What were the names of those men?

Answer. Joseph Smith, James Allen, and Thomas Nugen.

Question. For what purpose, if there was any purpose, were they furloughed?

Answer. It was stated, to attend as witnesses an investigation that was being conducted at Utica.

Question. Did those men all desert?

Answer. They did. They never returned to the depot.

Question. Was there in truth, as it turned out, any investigation in which those men were wanted as witnesses?

Answer. I never knew of any after that.

Question. Do you remember whether one other man deserted from that rendezvous camp who was enlisted in the 21st district?

Answer. I cannot speak of any.

Question. Except these three men, did any man ever desert from that camp who had been enlisted in the 21st district?

Answer. To my knowledge there did not. It would be impossible for me to say without consulting the records.

Question. Had you now any knowledge of any desertions from that district except the three men of which you have spoken, unless it be one other?

Answer. I examined the records and ascertained that four men had deserted from Elmira.

Cross-examined by Mr. RIDDLE:

Question. How long were you in command at Elmira?

Answer. About nine months. From September 20, 1864, to June 17, 1865.

Question. Are you able to state, from information in your hands, about what number of recruits were received at your rendezvous from the 21st district during that period?

Answer. No, sir; not during that period. During the last call for troops I think only two were received there from that district.

Question. You made the report referred to in these papers?

Answer. I wrote the letter that is published in that correspondence.

Question. What is the date of the report to which you refer?

Answer. I think it is in February some time.

By Mr. HOTCHKISS:

Question. The report that you refer to relates to Camp Seward and what took place there?

Answer. Yes, sir.

Question. Had you any personal knowledge of that, one way or another?

Answer. No, sir.

Question. Did you derive your information from Major John A. Haddock?

Answer. In part.

Question. From anybody else?

Answer. Yes, sir.

Question. Who?

Answer. From mustering officers who had been there, and from various officers whom I had seen there. I wrote more than one letter on that subject.

Question. Can you state whether in the report you made you relied, as to what was true of men from the twenty-first district, upon the statements made to you by Major Haddock—in what you said of men of the twenty-first district, you relied upon statements from Major Haddock?

Answer. Yes, sir.

JUNE 2, 1866.

WARD HUNT sworn and examined.

By Mr. HOTCHKISS:

Question. Where do you reside?

Answer. In Utica, New York.

Question. How long has that been your residence?

Answer. I was born there.

Question. What is your profession?

Answer. At this time I am judge of the court of appeals.

Question. And your profession has always been that of attorney and counsellor at law?

Answer. Yes, sir.

Question. For how long?

Answer. For more than thirty years.

Question. Have you read a letter, written by James B. Fry, which was read recently in the House of Representatives?

Answer. Yes, sir. I read it at the time of its appearance.

Question. I call your attention to this portion of that letter: "In the summer of 1863 Mr. Conkling made a case for himself by telegraphing to the War Department that the provost marshal of his district required legal advice, which he was thereupon empowered to give." What do you know of the truth or falsity of that statement? Speak at large, if you please, of the fact to which it relates.

Answer. I know that, in July of 1863, there was great difficulty and excitement growing out of the arrest of, and the issuing of a *habeas corpus* for, a deserter by the name of Hobson. A *habeas corpus* was issued by Judge Bacon, justice of the supreme court, and placed in the hands of the sheriff of the county of Oneida. It happened at that time that the counsel on whom the provost marshal would have relied for assistance were absent from Utica. Mr. Conkling, Mr. Charles H. Doolittle, and myself were the persons upon whom the provost marshal would most (omitting myself) properly rely for assistance in such cases. They were all absent, and the duty of answering the *habeas corpus* was thereupon assumed by Mr. Hubbard, deputy marshal, or special agent, connected with the provost marshal's office, who put in a return. It was at the time when there was great public excitement on the subject of the draft, and it was to take place at that time, and was the subject of great public interest.

Question. Was there, or was there not, there and elsewhere, in the State of New York, deep feeling in reference to arrests without process of law and the privilege of *habeas corpus*?

Answer. Yes, sir; and there was a strong idea of collision between the two departments of government. It was supposed that the sheriff would undertake to enforce this writ, and it was understood that the provost marshal was instructed, either particularly or by general directions, that the views of the government of the United States should be carried out at all hazards. As to the most of this that I have spoken of, it is not only from general information, but I know the facts.

Question. What became of the return which Mr. Hubbard drew in behalf of the provost marshal?

Answer. It was presented to the judge and overruled. The defence set up was that he was in the custody of the United States as a deserter, and held by military authority. An attachment was issued, as I understood, against the officer, and a delay was asked and was given to procure counsel and consult with the government. Mr. Kernan, then member of Congress, appeared against the government. About this time Mr. Conkling and myself returned. I examined the papers at the provost marshal's office, and gave some general and friendly advice upon them.

Question. What was the condition of things in Utica then in reference to there being public excitement and apprehension?

Answer. There was a good deal of excitement and apprehension that it would lead to general difficulty. It was at a time when there was more apprehension than at any time during the war.

Question. Do you remember whether it was about the time of the July riot in New York?

Answer. Yes, sir; it was during the latter part of July, 1863.

Question. Do you remember whether, upon consultation among leading citizens, it was agreed that Mr. Conkling should telegraph the War Department as to the facts?

Answer. It was advised. I advised the provost marshal to have that done, and think Mr. Roberts advised it.

Question. And was a despatch accordingly sent by Mr. Conkling? If so, look at this despatch and see if it is the one, (the following despatch being read:)

UTICA, NEW YORK, July 29, 1863.

In the absence of all of us who could aid him professionally, the provost marshal here was served with a *habeas corpus* to produce deserters. He obeyed the order not to produce, and so returned. The judge held this insufficient, and issued attachment. He telegraphed the district attorney and his assistant. They are absent and engaged. What shall we do?

R. CONKLING.

Hon. E. M. STANTON, *Secretary of War*.

Answer. I think this is the despatch—the precise language.

Question. Do you know that at the time the provost marshal had telegraphed the district attorney and his assistant, but had been unable to procure them?

Answer. I do.

Question. Do you remember whether you conferred with Mr. Conkling on this subject of telegraphing?

Answer. I think I did, and advised him to do so.

Question. Do you remember seeing the reply to this despatch which came at the time? Look at this and see if it is the one:

WAR DEPARTMENT,

Office of the Provost Marshal General, Washington, D. C., July 29, 1863.

Circular No. 36, July 1st, in relation to deserters, must be sustained. *The Secretary of War* desires you to act as counsel in behalf of the United States in case of litigation growing out of the acts of the provost marshal at Utica, as presented in your despatch of this date. Please show this despatch to the provost marshal.

JAMES B. FRY,
Provost Marshal General.

ROSCOE CONKLING, *Utica, New York.*

Answer. A despatch similar to this one—I think this one—was received.

Question. Was the case argued? and if so, by whom and before whom, and what was there of the argument as to the length and importance of it?

Answer. It was ably argued before the judge on behalf of the government by Mr. Conkling, and by Kernan on behalf of the deserter. I was myself present, and it was decided by Judge Bacon in favor of the government holding the deserter.

Question. Did the judge deliver a lengthy opinion which was published?

Answer. Very.

Question. And the provost marshal was sustained?

Answer. Yes, sir.

Question. Has that opinion ever been reversed?

Answer. Not that I am aware of.

Question. Was there ever after in that State any difficulty, practically, as to the laws in those cases?

Answer. Not that I am aware of. I think that that case was got up to be carried to the general term, but it was never proceeded on.

Question. The judge reversed his own holding?

Answer. Yes, sir.

Question. Do you know whether the case was carried to the general term?

Answer. I don't know, personally. My impression is that the case was made up

Question. Do you know that the case did go to the general term?

Answer. Yes, sir.

Question. And was argued by whom?

Answer. As I understood, by Mr. Conkling and Mr. Kernan.

(Mr. RIDDLE objected to this testimony as being irrelevant to the issue. Objection overruled.)

Question. I wish now to call your attention to a transaction, the date of which is December, 1864, and I will thank you to look at that letter from General Fry, of which the following is an extract:

WAR DEPARTMENT, PROVOST MARSHAL'S OFFICE,
December 27, 1864.

* * * * *

This assignment is only temporary until a new man can be found to fill the position, and I had no intention of appointing a successor to Captain Richardson without consulting you, and I would be glad to receive your views and recommendations on the subject. Colonel Poole has no authority in the matter of appointments.

Do you know whether, after the receipt of this letter, a successor for Captain Richardson was recommended?

Answer. Yes, sir.

Question. Who was the successor?

Answer. Peter B. Crandall.

Question. Will you state to the committee whether Mr. Conkling had anything to do with the selection of Mr. Crandall, and whether he refused to take any part in the selecting the successor?

Answer. It occurred in this wise: Mr. Conkling informed a number of persons—Mr. Roberts, Mr. Walker, Judge Bacon, myself, and probably others—that a successor was to be appointed to Captain Richardson, and desired that we should select or designate some one to fill the office, saying that he himself desired to have nothing to do with the selection or designation of the individual, but that any person we would fix upon he would recommend the appointment to the department. After consultation a number of days, Mr. Crandall was fixed upon.

Question. Did Mr. Conkling have anything whatever to do with the selection?

Answer. So far as I understood it, he declined to indicate, in any manner, that he preferred any particular person.

Question. On what grounds was Captain Crandall selected?

(Mr. RIDDLE objected to this evidence as irrelevant. Objection overruled.)

WITNESS. Mr. Crandall was selected as being an eminently honest and upright man, and a man of the best reputation and character. It was believed by every one that if there was to be found in the county an honest man, he was the one. There had been a good deal said about his predecessor, and it was determined, at all events, that an honest man should be placed in the position. And I believe the judgment of the citizens of Oneida county is unanimous as to the integrity of Captain Crandall. I have known him many years. He has always lived there.

Question. What is his moral character?

Answer. Of the highest order.

Question. I now call your attention, sir, to some other statements in this letter; and to this, for example:

"The third issue was as to the government's employing counsel to defend Crandall after he had been relieved, and had carried with him, in violation of the orders of the department, twenty thousand dollars local bounty de-

posited with him in behalf of recruits; and in regard to this he got into litigation. In this Mr. Conkling has failed. Counsel has not to my knowledge been authorized, nor have any lawyers been paid by the government in that suit."

Question. Do you remember a young man by the name of Hoard coming to Utica for any purpose?

Answer. I understood that he did.

Question. At about what time was that?

Answer. About the 8th of March, 1865.

Question. What was his business there, as you understood?

Answer. He was the clerk or agent of Major Haddock, as I understood. I never saw him myself.

Question. I call your attention to the following despatch:

UTICA, NEW YORK, *March 8, 1865.*

Is willing to give me all, but parties having claim on him threaten to sue him. Lawyers say he is liable. I can get about \$25,000 now, but he wishes to write you in regard to the balance. I have account of all he has. He is honest and it is safe. I write and wait.

S. FLOYD HOARD.

Major JOHN A. HADDOCK,
A. A. P. M. G., Elmira, N. Y.

Before Captain Crandall gave answer to the demand made upon him by Hoard, did you advise him as his counsel?

Answer. I did.

Question. Did he have any counsel but you throughout his troubles?

Answer. None that I am aware of.

Question. What was your firm at that time?

Answer. It was Hunt & Waterman and afterwards Hunt, Waterman, & Hunt.

Question. When it was Hunt, Waterman & Hunt it included your son, who came into the firm?

Answer. Yes, sir.

Question. You say you advised Crandall. What, if anything, did you advise him about the twenty thousand dollars of bonds?

Answer. I advised him that it would not be safe for him to deliver those bonds to Major Haddock, and he had better not do so.

Question. Did you state your reasons?

Answer. I did repeatedly.

Question. Suppose you state them here?

Answer. One reason why I advised was that I thought Major Haddock was not a safe man in whose hands to place them. The principal reason was that claims were made on Crandall by Aaron Richardson, who had placed those bonds in his hands; that the contract under which they were so placed was void as a matter of law; and that he should call upon Crandall and require him to deliver those bonds, as he did subsequently; and I advised Captain Crandall that in the tumult of the government he ought not to put himself in a position where he was not protected; that if the government would take these bonds and protect him; it was his duty to give the bonds to the government; but unless the government would indemnify him he ought to hold on to the bonds.

Question. Had these bonds been deposited as bounty or as security against desertion?

Answer. They had been deposited for this precise purpose—that Captain Crandall required the bonds put in in case of certain recruits who pretended to have enlisted for smaller bounty for the purpose of securing their going forward to the general rendezvous. He required Mr. Richardson to give him security to the amount of \$550 each man, that they would go forward and be there receipted;

and these bonds were deposited in pursuance of that suggestion. They were bonds of Oneida county. They were not deposited as a bounty, but simply as a contract to secure the attendance of the recruit.

Question. Was there any law or order ever produced or discovered by you which authorized Haddock to receive any money or bonds of any kind, no matter what, from Crandall?

(Objected to, and objection overruled.)

Answer. I never was able to discover any. I never have heard of any during the controversy.

Question. Did you have, during the administration of Captain Crandall, many conversations with him?

Answer. A great many. He consulted me very often throughout his office.

Question. Did you investigate the subject of these bonds and the rights of all parties?

Answer. I did.

Question. Did you often address to General Fry and cause Captain Crandall to address to General Fry statements on the subject?

Answer. I did.

Question. Are they before you?

Answer. Here is a letter dated Utica, New York, March 11, 1865, of Captain Crandall, which was written upon my advice and suggestion; also one from myself of the same date, directed to C. A. Dana, Assistant Secretary of War.

Question. Will you be good enough to read Captain Crandall's letter and your letter?

Answer. They are as follows:

PROVOST MARSHAL'S OFFICE, 21ST DISTRICT, NEW YORK,
Utica, N. Y., March 11, 1865.

GENERAL: I have the honor to report that the following is a correct statement of moneys now remaining in my hands, belonging to enlisted men, their agents, friends, or relatives. The disposal and care of the local bounty in this district has been very embarrassing to me. I have endeavored to do the best I could in regard to it. I also send you statements of county bonds, which were left with me by Aaron Richardson, who has been engaged in furnishing men for this county. Some of the men that were furnished by him refused to receive any local bounty whatever, insisting that all they claimed or desired was the bounty that government paid. Others took fifty dollars and would take no more. In all of these cases I fully explained to them the local bounty, and urged them to receive it, which was refused. But, as a precaution and to protect the government, before mustering I insisted that at least five hundred and fifty dollars in bonds or money should be deposited with me for each man as security for the receipt of the recruit at the general rendezvous.

I have in my hands, left with me by recruits in the manner stated, money to the amount of eleven thousand three hundred and ninety-five dollars, (\$11,395,) and county bonds to the amount of twenty thousand dollars, (\$20,000;) also county vouchers received from Lieutenant Colonel D. C. Poole, late acting provost marshal of this district, to the amount of two thousand and six hundred dollars, (\$2,600.) These persons by whom these were deposited, and to whom orders upon them were given, claim these moneys and securities from me, and claim to hold me personally responsible for the amount. Mr. Richardson claims that as provost marshal I had no authority to make a contract taking security for the appearance of the recruit, and that I must refund the money to him. Of the number of men furnished by him, thirty-one deserted before reaching rendezvous, seven of whom have been retaken. Major Haddock calls upon me to forward the money and securities to him. Counsel of high standing advise me that I cannot safely do so, but that I am responsible to the parties entitled to it. The money and securities are now on hand, and I wish nothing so much as to pay this over. Can I safely pay this money to Major Haddock, and will the government protect me against the persons who claim it? Be pleased to instruct me on this point. In two cases Mr. Richardson, of Albany, personally and of his own money, left with me six hundred dollars (\$600) in each case as security that the recruit should go to rendezvous. They have been at the rendezvous now for two weeks, and Mr. Richardson demands of me the money. Major Haddock demands that I shall forward it to him. Be pleased to instruct me specifically on this point also. In another case three recruits were presented who were minors; in two cases four hundred dollars, (\$400,) and five hundred dollars (\$500) in the other, was left with me on their account. The parents, with the assent of the minors, demand this money. Major Haddock requires me to forward it to him. Be pleased to instruct me specially on this

point also. The remaining money in my hands, according to the list enclosed, is where money for bounty has been by the different soldiers; and in each case direction was given to me, and entered upon the book, to whom the money was to be paid. I engaged to these persons to pay them the money when the recruit should reach rendezvous. They now claim the performance of this promise on my part. Major Haddock requires me to forward the money to him. Be pleased to instruct me as to this money also. I have not forwarded the five-eighths of the bounty for two reasons: First. By circular No. 32, as I understand it, the recruit is authorized to direct the disposition to be made of their amount of money. Second. The recruits in each of these cases, before being mustered in, have expressly required me to retain their money here, not to forward it to rendezvous.

Enclosed please find copy of circular No. 32, together with Major Haddock's orders requiring me to turn these moneys and bonds over to him.

All of which is respectfully submitted.

P. B. CRANDALL,

Captain and Provost Marshal, 21st District, N. Y.

Brigadier General JAMES B. FRY,

Provost Marshal General U. S., Washington, D. C.

(Through Major John A. Haddock, acting assistant provost marshal general, Elmira, New York.)

Annexed to this letter is a statement of the moneys referred to in the letter, the names of the parties to whom due, remarks, and full details.

Question. Was this detailed statement forwarded to General Fry?

Answer. Yes, sir.

Question. Through whom was this letter forwarded to General Fry?

Answer. Through Major Haddock.

Question. Did you, on the same day, yourself write a letter?

Answer. I did, to Mr. Dana.

Question. Did you enclose a copy of Captain Crandall's letter which you have just read?

Answer. I did; my letter states that.

Question. And also a copy of the account in detail of these moneys?

Answer. I think so, but cannot say certain.

Question. Will you please read the letter you wrote to Mr. Dana?

Answer. It is as follows:

UTICA March 11, 1865.

SIR: It happened that I had to-day, for the first time since Captain Crandall has been provost marshal at this place, been at his office looking over some of his papers. The letter to General Fry, through Major Haddock, of which a copy is enclosed, (No. 1,) was to-day sent to Major Haddock. Mr. Conkling, therefore, handed me your letter of the 9th to him, and requested me to reply to it.

In the first place, I desire to assure you that Captain Crandall is an honest, upright man. None more so can be found in this State. I would pledge myself as fully upon it as that upon any man you could name. I do assure you that you can depend upon this, and that whatever else may turn up, you will find Captain Crandall's accounts all right and his integrity unspotted. Too much cannot be stated upon this point.

As to the suggestions against this office, I desire your perusal of the copy of letter No. 1, enclosed.

You say that General Fry says "That the board and the provost marshal, Captain Crandall, are worse than their predecessors. Out of the one hundred and ninety men enlisted by them, one hundred and ten deserted before leaving Utica." This is a serious statement, and here the answer, "*Ex uno dice omnes*." Since he has been in charge, Captain Crandall has sent forward nearly six hundred men, and forty-one are all that escaped either at Utica or the rendezvous. This is true. The records and Crandall's report show it to be so. When the men reach the rendezvous they cease to be under his charge, and he ceases to be responsible. Captain Crandall is informed that at Auburn the greatest facilities are offered for escape; indeed, that escape is almost invited.

You further say that "Colonel Baker reports that the frauds at Utica are worse than at any other portion of the State." This is so general that I can furnish no other refutation than to show you to the one specification which is given above, and also to reiterate that an imputation upon Captain Crandall must certainly be a mistaken one.

In my judgment, Major Haddock is an unsafe man. His associates here were of a very bad character, and I will give you an instance or two of his operations with Crandall. I take it that these charges against Crandall all come through him, and that the suspension is at his request.

1. He recently sent a sergeant here to take charge of the barracks. He was placed in charge of the enlisted men, and his first act was to open the back door and allow ten men to escape; two were retaken and confessed that they each paid the sergeant ten dollars. What the eight who succeeded in escaping paid is not known. This was a man sent here by Haddock himself.

2. Richardson, of Albany, is one of the most extensive bounty brokers in the State. Of the forty-one men who escaped, thirty-one were enlisted through Richardson. I have now before me two letters written by Haddock and transmitted, not by mail, but by Richardson himself to Crandall, in one of which he says: "From my acquaintance with Aron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do all as he agrees. Such men are very valuable in putting in men, as his acquaintance is very extensive and his resources many. I hope you will grant him all reasonable indulgence. He is a man of property and can back up his statements:"

In another letter, also handed in by Richardson, he says: "I wish you to understand distinctly that when a man is enlisted and mustered, the credit of that man is due to the locality for which he enlisted. I shall in no case order a credit to be revoked, unless it shall appear that the local bounty committee are party to a positive fraud." * * * Is not this a significant message sent through a bounty broker? * * * "If the men, however, agreed to go for fifty dollars each there can be no just cause of complaint."

I am informed that a Washington detective has been here recently, whose opinion is, that it is the Elmira office that creates all the difficulty, and that Major Haddock is not what he should be. This I give as a report, merely. His name is James Gall, jr., and if he is in Washington I beg you will examine him.

Captain Meredith has recently been here, coming under the impression evidently obtained with you. I understand that he has left perfectly satisfied that the office is honestly and fairly conducted.

I do not claim that Captain Crandall may not have committed errors, but I assure you no dishonesty can be maintained, and, with Mr. Conkling, I beg that there be no change until an investigation; and if a suspension has been ordered, that the order may not be issued. It will not only be a great mortification to us, but this removal would be a triumph of corruption over honesty that the country cannot now afford. Major Haddock's chief clerk has said, while in this city, that the office here should be made too hot for Crandall, and he seems, certainly, to have made it quite warm.

I am, very respectfully,

WARD HUNT.

Hon. C. A. DANA, *Assistant Secretary of War.*

The following is a copy of Hoard's order:

ELMIRA, N. Y., March 4, 1865.

CAPTAIN: You will immediately turn over to Special Agent S. Floyd Hoard all moneys, bonds, and securities whatever that may have been deposited in your hands by enlisted men, brokers, or agents to protect the government against desertion, or that you may have received from any person in your capacity as provost marshal. Special Agent Hoard is instructed to receipt to you for the same.

I am, very respectfully, your obedient servant,

JOHN A. HADDOCK,

Major 12th V. R., Acting Ass't Provost Marshal Gen'l, Western Division, N. Y.

P. B. CRANDALL,

Provost Marshal Twenty-first District, Utica, N. Y.

Question. I wish to inquire whether or not Captain Crandall exhibited to you the evidences of Major Haddock's purpose in getting hold of these bonds—in getting them into his hands?

Answer. Captain Crandall was satisfied, and I was satisfied, from the evidences shown me by Captain Crandall, that this order and the desire to get those bonds was not legitimate nor honest.

(Mr. Riddle objected to this answer, unless the gentleman said he would produce that evidence.)

After Hoard had been there a man by the name of Meredith came for the purpose of obtaining those bonds, and I advised Captain Crandall not to deliver them.

Question. Will you state whether, as to a large quantity of these bonds, probably about \$7,000, the men against whose desertion that portion was an indemnity, had not deserted, and there was, therefore, no ground on which they could be turned over to the government?

Answer. About \$13,000 of these bonds would have been forfeited under that contract, about that amount of men having deserted. About \$7,000 no one would have any claim to, as against Aaron Richardson.

I wish to call your attention to this portion of General Fry's letter :

"An inspection, made at my request in the latter part of March, 1865, elicited the first information which I received suitable for proceeding against him (Haddock.) I received the report on the 1st of April, and on the same day I submitted it to the Secretary of War."

Question. Did you, on the 12th of March, send a despatch ; and if so, is that the despatch ?

Answer. I indicted a despatch, which was sent by Mr. Hopkins, of which this is a copy :

UTICA, NEW YORK, *March 12, 1863.*

The Hon. C. A. DANA, *Assistant Secretary of War :*

Your letter is received. The enrolling board of this district is, beyond any doubt, all right. The fault, if any, with Haddock, of Elmira ; papers now mailed to you will show. Stay suspension for papers to reach you.

R. CONKLING.
WARD HUNT.
C. H. HOPKINS.

Mr. Conkling was out of town, and his name was affixed by Mr. Hopkins by my concurrence.

Question. Did General Fry in any way answer those letters and communications sent to him ?

Answer. Not to my knowledge.

Question. Did he cause anybody to answer them, to your knowledge ?

Answer. No, sir.

Question. Was there ever, to your knowledge, any notice taken by him of this matter until an order came, of which a copy is now handed you ?

Answer. This is the first response that I am aware of that came to those letters :

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S OFFICE,
Washington, D. C., March 30, 1865.

CAPTAIN: All moneys, bonds, and other evidences of indebtedness in your possession, belonging to enlisted men who have deserted either before or after arriving at the general rendezvous, will be immediately turned over to Major Lee, mustering and disbursing officer, at Rochester. All moneys, bonds, and other evidences of indebtedness in your possession, belonging to enlisted men other than deserters, will be immediately turned over to the United States paymaster, stationed at the draft rendezvous at Elmira. You will report by telegraph compliance with this order.

JAMES B. FRY,
Provost Marshal General.

Captain CRANDALL,
Care of Major Beadle, Acting Provost Marshal, Utica, N. Y.

Question. Do you remember where you were at this time ?

Answer. At Syracuse, fifty-three miles from Utica.

Question. I want to call your attention to a statement which I will read from an exhibit, and which accompanies this letter—an extract from one of Fry's communications :

[Extract.]

"On the 30th of March he was again ordered by telegraph from this office to turn over the money at once, and on the 1st of April following he answered by telegraph that he would immediately comply. It subsequently appeared that, instead of turning over the amount of \$33,995 10, which he had previously stated was in his possession, he had only turned over \$8,095."

Question. Have you in hand the telegraph referred to ?

Answer. I have a copy. It is as follows :

UTICA, N. Y., April 1, 1865.

JAMES B. FRY :

Your communication received. Will comply at once, and send particulars by letter.

P. B. CRANDALL.

Question. Read that letter from Crandall to Fry.

Answer. It is as follows :

UTICA, N. Y., April 1, 1865.

GENERAL : I have the honor to report that, in compliance with your order of March 31, requiring me to turn over to Major A. J. Lee, mustering and disbursing officer, Rochester, "all moneys, bonds, and other evidences of indebtedness in your possession, belonging to enlisted men who have deserted, either before or after arriving at the general rendezvous," I have turned over to him county vouchers amounting to two thousand and six hundred dollars, (\$2,600,) which is a full compliance with the order. See enclosed copy of report to Major A. J. Lee, mustering and disbursing officer.

And I further have the honor to report that, in compliance with the order requiring me to turn over to J. Ladd, United States paymaster at Elmira, "all moneys, bonds, and other evidences of indebtedness in your possession, belonging to enlisted men, other than those deserted," I have turned over to him five thousand four hundred and ninety-five dollars, (\$5,495,) which is a full compliance with the order. See enclosed copy to John Ladd, paymaster United States army.

I am, general, very respectfully, your obedient servant,

P. B. CRANDALL,

Captain and Provost Marshal 21st District New York

JAMES B. FRY, *Provost Marshal General.*

Annexed is a copy of a letter to Major Lee, and a copy of a letter to Jno. Ladd, paymaster, and a statement of the moneys left with Captain Crandall by recruits, at the time of their enlistment, with their directions as to its disposal, turned over to John Ladd, paymaster, by order of General James B. Fry, Provost Marshal General. That is a statement in detail of the moneys referred to, footing up \$5,495.

Question. And all those enclosures were contained in the letter sent to General Fry ?

Answer. Evidently, from these papers, I do not personally know about that.

Question. What was the next communication from anybody who could have been inspired by General Fry to write it, that you know of ?

Answer. A communication dated April 5, 1865, from the Provost Marshal General's bureau, signed C. McKeever, assistant adjutant general, as follows :

WAR DEPARTMENT,

Washington, D. C., April 5, 1865.

CAPTAIN : I am directed by the Provost Marshal General to acknowledge receipt of your communication of the 1st instant, reporting the transfer by you of \$5,495 to Major Ladd, and \$2,600 to Major Lee, and to invite your attention to the fact that in a tabular statement of moneys, checks, bonds and vouchers, deposited with you on account of local bounties, forwarded by you to this office, you admit having in your possession \$35,995, which leaves a balance of \$25,000 unaccounted for. The Provost Marshal General directs me to inquire what disposition you have made of the balance, amounting to \$25,000.

I am, captain, very respectfully, your obedient servant,

C. MCKEEVER, *Assistant Adjutant General.*

Captain P. B. CRANDALL,

Care Major Beadle, Acting Provost Marshal, Utica, N. Y.

Question. Do you know that that balance had been turned over to Beadle and to others under special orders ?

Answer. I understood that everything was turned over that was in Captain Crandall's hands except the \$20,000 of bonds.

Question. Was that the balance which is referred to ?

Answer. I so understand it.

Question. Is there an answer to that letter?

Answer. There is; it is as follows:

UTICA, *New York*, April 11, 1865.

GENERAL: I have the honor to acknowledge the receipt of your communication of the 6th instant, calling my attention to my report of \$33,995, money and other securities in my possession, and asking for information as to the disposal of the residue by me, after remittances to Major Lee and Major Ladd. In reply, I would respectfully refer you to my letter of March 11th for a full statement of all the matters inquired for. I will also transmit by the mail of to-morrow a renewed statement of the information desired by you, and in a convenient form.

I am, general, most respectfully, your obedient servant,

P. B. CRANDALL,

Captain and Provost Marshal 21st District, N. Y.

JAMES B. FRY,

Provost Marshal General, Washington, D. C.

Question. Did Captain Crandall bring that communication of McKeever's to you?

Answer. I think he did.

Question. And was there, to your knowledge, ever any explanation of General Fry's sending this order of March 30, giving no direction about the bonds, and then, after Crandall had sent these detailed statements to him, sending, through McKeever, that letter?

Answer. That is all that I am aware of.

Question. After the receipt of McKeever's letter and the answer which you have read, was there ever to your knowledge any communication from Fry by way of objection or criticism or otherwise, in reference to the way in which Captain Crandall had complied with the order of March 30?

Answer. Not until these difficulties arose; not until many months subsequent.

Question. Did you, some time after this, address a letter to General Fry on this subject?

Answer. I did; Mr. Richardson threatened to commence a suit against Captain Crandall to compel the delivery of those \$20,000 bonds. Either before that suit was commenced or at the time of its commencement, I wrote a letter to General Fry on behalf of Captain Crandall, stating that fact, and reiterating in general terms the manner in which Captain Crandall held these bonds, and requesting General Fry, on behalf of the government, to receive these bonds and to indemnify and protect Captain Crandall against any claim of Richardson. The precise terms of the letter will show when it is produced. I received no answer to that letter, and suit was commenced in the name of James W. Richardson. This letter was about the middle of April.

Question. Was that letter ever answered?

Answer. No notice was ever taken of it in any form, to my knowledge.

Question. Did Captain Crandall, and did you afterwards, and from time to time, endeavor to get some instruction or information?

Answer. I did. I wrote to General Fry.

Question. If you find the letter before you, please read it.

Answer. It is as follows:

UTICA, *September* 15, 1865.

DEAR SIR: The suit of James Richardson against myself, in which he seeks to compel me to give up to him a large amount of Oneida county bonds, delivered to me by Aaron Richardson as security for the safe arrival of recruits, is still pending. I have heretofore fully stated to you the terms upon which these bonds were placed in my hands as provost marshal of the twenty-first district, and I have repeatedly asked your instructions as to the defence of the suit, and that the government would take charge of it, and would indemnify me against loss and costs in relation to it. The department has given no attention to my appeals on this subject, and as I have already incurred loss and expense individually in this defence, I do not feel bound further to carry it on. As the trial of Major Haddock has brought out all the government required to know in relation to Mr. Richardson's proceedings, I feel the less obligation to continue the defence. Unless the department, therefore,

gives instructions to the attorneys for the defence—Hunt, Waterman, and Hunt, Utica, New York—and assumes the responsibility of the suit, the defence will be abandoned by me, and Mr. Richardson will be allowed to take judgment for the recovery of his bonds, and to obtain possession of the same.

I have the honor to be,

P. B. CRANDALL,

Late Captain and Provost Marshal, Twenty-first District, New York.

General J. B. FRY,

Provost Marshal General, Washington, D. C.

Question. Do you know whether Captain Crandall ever claimed a personal interest in those bonds?

Answer. Never. He was always ready to deliver them on being indemnified.

Question. Did Captain Crandall have any interest whatever in the question whether Richardson succeeded in getting the bonds, or whether the government succeeded in holding them?

Answer. None whatever.

Question. Was there ever, to your knowledge, on Captain Crandall's part, or on your part, or on Mr. Conkling's part, any motive or object about those bonds, except to enable the government to hold them for its benefit against Richardson?

Answer. I know of none, but to hold them that the government might have the benefit of them, and to compel the proper conduct of Richardson during the Haddock investigation.

Question. Do you remember requesting Mr. Conkling to forward to General Fry a copy of the letter which you have read, or the Secretary of War, in the hope of obtaining some answer to it?

Answer. I spoke to Mr. Conkling, and sent him in a copy of the letter with the request that he would endeavor to procure the action of the government in relation to it. I think Mr. Conkling read me the letter he wrote to Mr. Stanton.

Question. Had Mr. Conkling anything to do with this matter, one way or another, except at your request in the hope of getting the government to assert its right to those bonds?

Answer. He had nothing to do with the bonds or any matter connected with them. He was understood to represent the government to some extent.

Question. Did Mr. Conkling ever act as counsel or professionally in any way for Crandall?

Answer. Not that I am aware of. He had nothing to do with this.

Question. Was there ever between Mr. Hunt and Mr. Conkling any business, partnerships, or relation whatever, or any interest, however remote, in Mr. Conkling in the professional or other business affairs of yourself?

Answer. Never at any time to the slightest extent.

Question. In all the opportunities you had of seeing Captain Crandall's administration of his office, and noticing the particulars of it, did he ever to your knowledge do any act or omit any act which on his part involves fraud or impropriety, or default of duty as an officer?

(Objected to, and objection overruled.)

Answer. He never did in any respect. So far as my knowledge goes, I have every reason to believe that everything on the part of Captain Crandall in his office was in all respects upright, honest, and well managed.

Question. I ask you whether after Mr. Conkling did write to General Fry or the War Department asking an answer about these bonds, General Fry ever did give any directions, or to your knowledge take any steps to secure the rights of the government as to the \$20,000 bonds?

Answer. He never did.

Question. What became of those bonds eventually?

Answer. The suit was tried before Judge Bacon, and was decided in favor of Captain Crandall and against the claim of Richardson. The suit is now, as I understand, appealed to the general term.

Question. In the mean time, you having gone upon the bench of the court of appeals, who succeeds you as counsel?

Answer. Waterman and Hunt are attorneys, and I think Judge Denio, the late chief justice of the court of appeals of the State, is counsel.

Question. And in consequence of the omission or refusal of General Fry to take any charge of, or give any direction as to, these bonds, what has become of them; who now represents them, and represents the claim?

Answer. Within a few days before the suit was tried, a resolution was passed by the board of supervisors of the county of Oneida, in effect requesting Mr. Crandall to transfer to the county for their benefit, to indemnify them as far as possible on the subject of recruiting moneys, these bonds of Richardson and any claim he might have in or to the bonds, agreeing with him to indemnify him against all loss or damage in consequence of so doing, upon any claim that would be made against him, and offering to pay his costs or expenses. A bond was given him which I prepared, and an assignment made transferring all his interest in the claims for the benefit of the county of Oneida. Mr. Crandall made no personal claim of ownership of the bonds at any time.

Question. Why was it that this suit and defence, in place of continuing for the benefit of the government, lapsed and went to the county of Oneida?

Answer. For the reason that it was supposed that the county had as much equitable interest and perhaps as much legal claim to those bonds as the government.

Question. I wish to ask how it came that the action was not carried on by the government, but some other person was looked to?

Answer. The government having refused to indemnify, or to take charge of, or to take any responsibility in relation to it, Captain Crandall felt under no obligation to construe it for the benefit of the government at his own risk and cost.

Question. Will you state why the attorneys were changed to Waterman and Hunt?

Answer. A change of partnership was made in consequence of my going upon the bench. It was changed in name as well as in fact.

Question. And the result is, assuming that the defence ultimately succeeds, that the \$20,000 go, not to the government, but to the county, in consequence of the government refusing to give instructions about it?

Answer. Yes, sir.

Question. I come now to a question about Aaron Richardson. Will you state whether, from first to last during the time when Aaron Richardson was by degrees making disclosures of these bounty frauds, you were cognizant daily, or nearly so, of what was progressing in that respect?

Answer. I was.

Question. To whom did Aaron Richardson make those disclosures?

Answer. To Mr. Conkling.

Question. Are you cognizant of the fact that, after he had signified his willingness to make disclosures if he could be protected in doing so, Mr. Conkling wrote to the War Department for instructions and authority in reference to giving Richardson assurance that he might divulge with impunity?

Answer. He did.

Question. Was this prior to Richardson's arrest on the morning of the burning of the Female Seminary?

Answer. I think it was. Mr. Conkling conferred with me daily or almost daily in regard to disclosures made by Richardson, and information gained by him or through him in regard to Major Haddock and the difficulties with regard to bounties, enlistments, and frauds in that district and that region, and advised with me, and I advised with him, in relation to it.

Question. And was there anything in regard to Richardson in that behalf

except an effort to gain such information from him as was to be got for the benefit of the government?

(Objected to, and objection overruled.)

Answer. Nothing whatever.

Question. Do you recollect the circumstance of his being arrested by detectives?

Answer. Yes, sir.

Question. Do you recollect Mr. Conkling informing you, and on that same day, of what had occurred?

(Objected to.)

Answer. Mr. Conkling informed me, I think on the same day, that Richardson had been arrested early in the morning; that there was some confusion about it; that Richardson had sent for him, and that he had taken the detectives one side, and had informed them that Richardson was making important disclosures to him, and was aiding and benefiting the government in that way, and that Mr. Conkling was making use of him; and that, in substance, the facts stated by him to the detectives induced them to discharge Richardson upon an agreement that he would go at once, or upon demand, and present himself to Colonel Baker in the city of New York, which Richardson did.

Question. Do you remember Mr. Conkling receiving a telegram from the Secretary of War, summoning him to come to Washington?

Answer. I do.

Question. When and where.

Answer. About March 30, 1864. It was received at Syracuse.

Question. Was Mr. Conkling at Syracuse?

Answer. Yes, sir; he and myself were at Syracuse on professional engagements with reference to litigations in Connecticut, and nothing to do with the government.

Question. Did Mr. Conkling go to Washington?

Answer. He left Syracuse about midnight.

Question. Were you familiar, from that time on until the close of the Haddock trial in August, with the services rendered by Mr. Conkling?

Answer. I was aware of the vast deal of time required. A good deal I did not know of. I can state in general terms what I was aware of.

Question. Without going into details, will you state first whether, to your knowledge, Mr. Conkling withdrew from profitable and important professional employment in order to attend to this?

Answer. I know that he was obliged to give up other engagements, in which I was concerned with him, on account of this?

(Question and answer objected to; objection overruled.)

Question. Speaking of one trial, will you state whether Mr. Conkling withdrew from that trial, and what the fee was that was paid to the counsel taking his place?

Answer. Mr. Conkling withdrew from the Frederick trial, which was afterwards conducted on behalf of his client by Mr. Sedgwick and Mr. Mitchell, occupying five days. I was myself counsel originally in the case. As I understood, they paid Messrs. Sedgwick and Mitchell \$2,000.

Question. Do you know of the other engagements of which Mr. Conkling was deprived in order to accept this retainer and attend to it?

Answer. I cannot specify them, but I know the duty was almost exclusive of anything else for three or four or five months.

Question. Are you familiar with the value and prices received by the counsel in question for his services in general cases?

Answer. Yes, sir.

Question. What, in your judgment, is a moderate value of the services rendered the government by Mr. Conkling, which you have referred to?

Answer. Mr. Conkling returned from Washington within a week or ten days

probably after he left Syracuse in the manner I mentioned. From that time, which was in April, and all the summer until in August, when the Haddock trial was finished, I was in almost daily communication with him, except when at the trial. I knew that he was largely engaged in the preparation of the evidence. I knew that it required a vast amount of labor, skill, and ingenuity, and I knew that the trial itself was a laborious and difficult one, and I think a charge of \$5,000 for that service would have been a very moderate one.

Question. Do you remember Captain Richardson being removed from office?

Answer. I do.

Question. Do you remember that it took place immediately after Major Haddock was understood to have been in the city of Utica in confidential communication with George W. Smith and Colonel McQuade?

Answer. He was removed immediately after that.

Question. Was there, to your knowledge, any statement of the reason of his removal?

Answer. None to my knowledge. I understood there was none.

Question. Did you, with others, join in a letter to the President, dated December 30, 1864, in reference to the removal of Richardson?

Answer. I did.

The letter referred to was read, having been previously placed in evidence by General Fry. (See 1st day's proceedings.)

Question. State whether you added to this letter yourself?

Answer. I signed a concurrence in this letter of Mr. Conkling's, which was dated December 30, 1864, with others, and I believe wrote the concurrence myself. That concurrence was as follows:

UTICA, December 30, 1864.

The undersigned fully concur in all the suggestions in the letter of Mr. Conkling, and take the liberty to say that the immediate interposition of the President is desirable.

WILLIAM J. BACON,

Judge of the Supreme Court.

ELLIS H. ROBERTS,

Proprietor and Editor Utica Herald.

WARD HUNT,

ERASTUS CLARK,

Deputy Secretary of State of New York.

T. R. WALKER,

Collector.

C. H. HOPKINS,

Member of State Committee.

The PRESIDENT.

Question. Will you state whether there was, to your knowledge, on the part of any of these persons any object or intention except that there should be a fair hearing or understanding of the matter, and particularly to get at the truth or falsity of any charges or alleged misconduct?

Answer. That was the object.

(Question and answer objected to; objection overruled.)

Question. Had Mr. Conkling, to your knowledge, any part or interest in the matter except as a citizen of the community?

Answer. I am not aware of any.

Question. Did Captain Crandall show you letters and communications from Major Haddock, having relation to the subject of mustering in men for bounties, large and small?

Answer. I do recollect that Captain Crandall exhibited letters to me; I know that the board of supervisors passed a resolution fixing the bounty at what the recruits could be obtained for, not exceeding a certain sum.

Question. Do you know what action Captain Crandall took as to mustering in men?

Answer. I know, in general terms, that he mustered in for large and for small bounties. I know this, however, only from information.

Question. Did Captain Crandall consult you on the subject of his duty in reference to communications from Major Haddock as to mustering in men for bounties of different sums?

Answer. He did.

Question. Will you state whether you advised him that he would be doing his duty?

Answer. Captain Crandall had recruits presented to him from time to time, who claimed that they only received from him a very small bounty, much less than was authorized by the local authorities. Captain Crandall, as he informed me, advised those men that they could get a much higher bounty, and that any arrangement they had made for a smaller bounty was not binding, and that he would relieve them; and that if the men who brought them there did not wish to give them a larger one, he would find men who would give them the full rate, and that their contract for the smaller bounty was not binding upon them. In some cases they insisted upon taking only the smaller bounty. I advised Captain Crandall that it was his duty to take men otherwise properly qualified, notwithstanding they refused to take the larger amount of bounty, and that it would be no justification to him to refuse to take a man, in all respects physically qualified, because he suspected there was something wrong about his bounty; and whenever I advised Captain Crandall on this subject it was to that purpose.

Cross-examination by Mr. RIDDLE:

Question. Did Captain Crandall trouble himself to know what had become of the balance of the bounty, that the men had been mustered in on less than the sum allowed them?

Answer. I understand that he did, in this way: That where he was of the opinion that there was something not honest about it; and he advised these men at all times that they were entitled to the higher bounty, and that if these men would not give it to them others would.

Question. You spoke of resolutions by the board of supervisors by which a bounty was fixed, but at the same time they were swearing in men for less than that bounty. Now, what became of the excess between the sum took and that allowed by the supervisors?

Answer. That is the very question Captain Crandall wanted to get at. My conjectures were that there was some arrangement between the bounty broker and the recruit, by which a less sum was given than that really offered by the government, and that there was some arrangement between them by which they intended to cheat the government.

Question. Did not most of the desertions occur from the men who received the least bounty?

Answer. That is a matter about which I have no information; I have no personal knowledge on this subject.

Question. Was it not notorious that the board of supervisors, or somebody else, were putting in men there as committees at less than the rates of bounties fixed by their own resolutions, and were themselves pocketing the excess?

Answer. These frauds as to diminished bounties—I never heard it suggested. I never heard it said that any of them were perpetrated through the supervisors. It was said that some of the supervisors made small sums on those men that they put in. Individual supervisors bargained and got their men for a somewhat less sum and put them in.

Question. Did not they at that time constitute themselves a board or committee to recruit.

Answer. I understand that the resolution authorized each supervisor to procure recruits for his town.

Question. Did they also under that take into their hands the whole sum appropriated for bounties under that call?

Answer. Not that I am aware of.

Question. And fill their own quotas and then take to themselves the credit which the maximum of those bounties would make up?

Answer. I had no knowledge whatever on the subject. I advised supervisors who talked with me on no account to put in a man for a less sum than they reported to the board as having been paid for. And those who conversed with me I am satisfied did no such thing.

Question. How early in the history of recruiting did you know that Aaron Richardson was engaged in putting in recruits at Utica?

Answer. About the time that these difficulties commenced; a few days before Captain Crandall was removed.

Question. Was not Aaron Richardson putting in recruits while Captain Richardson was there?

Answer. I never heard of them.

Question. When, in connexion with that, did you learn that he was making statements to Mr. Conkling?

Answer. Very soon after Captain Crandall's removal.

Question. What time was that?

Answer. March 13, I think.

Question. Do you fix that upon having seen an order for his suspension or removal?

Answer. I fix that from the letters I have read this morning.

Question. How did Richardson come to make these communications to Mr. Conkling?

Answer. I think Richardson had become alarmed. There were rumors of proceedings against parties, and as a precaution he put himself in the attitude of State's evidence.

Question. Did he make any statements to Crandall?

Answer. Not that I am aware of. I have understood that Richardson intimated on one occasion to Crandall, a day or two before his suspension, he either did not deny or gave some information, and Crandall told him that if anything was wrong to make a full disclosure.

Question. When was the first time you heard complaints of fraudulent practices?

Answer. I heard suggestions that Captain Richardson was not entirely correct in his conduct.

Question. At what time did you hear these suggestions?

Answer. During his term, which ended about February, I think.

Question. Had they been running through and accompanying his administration—the whole of it?

Answer. I could not say; I sometimes heard intimations.

Question. Mr. Conkling was intimate with you in reference to these recruiting matters?

Answer. Yes, sir; intimately so.

Question. Was that made to assume a somewhat political aspect? Were Mr. Conkling's political fortunes somewhat made to depend upon them?

Answer. I think not.

Question. You are a political friend of Mr. Conkling?

Answer. Strong; and have a high regard and great respect for him.

Question. Is it not now understood that this investigation will have a political influence in Oneida county?

Answer. I could not say. I am not aware of any effect or impression it would have in the district. I do not know of an individual upon whose political fortunes it would have any effect.

Question. Did you learn from Mr. Conkling at any time what statements Aaron Richardson made to him in reference to Major Haddock?

Answer. I did.

Question. All these statements of corruption took the direction of Major Haddock?

Answer. I think Major Haddock was concerned in them.

Question. State whether they also involved other parties.

Answer. Yes, sir; many of them did.

Question. And any parties resident of the 21st district?

Answer. Yes, sir.

Question. More than one?

Answer. I think several.

Question. Did you read the correspondence between Mr. Conkling and the department, in reference to his promising impunity to Richardson?

Answer. I think so; I am not very clear in my recollection about that. I think I cannot be mistaken in seeing his communication to that department.

Question. Did that correspondence date as early as April?

Answer. I should think before April.

Question. Do you know whether or not Mr. Conkling, at any time before his visit to Washington, or in April, had prepared any general or particular statements of any matter that he had investigated connected with the supposed frauds, and forwarded it to the War Department?

Answer. No, sir; I should think not, except what has been referred to in my direct examination.

Question. In reference to that habeas corpus case, was it fully argued in court of general term, and decided?

Answer. Yes, sir; at the general term. I was not present, but I suppose it was argued and decided upon the question of the fact of the President's proclamation declaring martial law.

Question. Do you know what compensation Mr. Conkling received for his services in that suit?

Answer. No, sir.

Question. Did he receive any?

Answer. I do not know.

By Mr. HOTCHKISS:

Question. Do you not know that for this action of the board of supervisors the distinct reason was that the best men who went said: "I don't want my bounty to go to Haddock, nor to Fry, but if I can leave my full amount at home to support my family, pay the mortgage on my house and lot, &c., I will enlist?"

Answer. A great complaint was made in respect to that. They wanted their bounty kept at home, and not to "go forward," as was expressed.

Question. Was that the reason why the supervisors passed that resolution?

Answer. I did not know that that had anything to do with it.

Question. In cases where the men received fifty dollars, was the effect of the operation this: that the man who enlisted, taking no bounty, or but fifty dollars, while that was sent forward, he received in addition to that, cash down, whatever he was paid by the man who induced him to go as his substitute or as a recruit, according to whatever bargain he chose to make?

Answer. That was undoubtedly the effect of the operation.

Question. Have you any knowledge whatever that any supervisor ever charged the county a farthing more than he actually paid for the man?

Answer. I have no knowledge of it. There were some of the best and most upright men in the State of both political parties on that board.

Question. Do you know the fact that the charges which were afterward

alleged to exist against Captain Richardson were put into the hands of William A. Dart, district attorney of the United States, and by him transmitted to Mr. Jenkins, the district attorney of Oneida county?

Answer. I do.

Question. And those charges were presented to the grand jury and by them investigated, and they found no cause of complaint against Captain Richardson?

Answer. I don't know anything about that.

L. H. BABCOCK sworn and examined:

By Mr. HOTCHKISS:

Question. Did you come here as a witness for General Fry?

Answer. Yes, sir.

Question. Did District Attorney Jenkins, of Oneida county, send down papers by you relating to Captain Richardson's charges?

Answer. He did.

Question. Have those papers been in his hands a year or more?

Answer. Yes, sir.

Question. Did you deliver them to the Secretary of War?

Answer. I did.

MONDAY, *June 4*, 1866.

The committee decided to permit proof of such frauds and misdemeanors in the district to which Mr. Conkling's supervision extended, as are previously shown must have come to Mr. Conkling's knowledge in the exercise of reasonable diligence in the discharge of the duties which he may be proved to have assumed in that behalf.

The committee further decided that objection must be made in writing to the papers presented.

Mr. Hotchkiss offered the following in writing:

"The evidence on the part of General Fry having all been offered conditionally, upon the plea or assurance that it would be rendered competent and admissible, and subject as to each piece of evidence, as to all objections, Mr. Hotchkiss now calls up and states the objections, heretofore made, either generally or specifically, and he insists that no part of the evidence offered is, in itself admissible or competent, or has been rendered admissible or competent by other proof. He assigns the following among other grounds of objection:

"1. The papers offered are secondary evidence of facts which, if they have any relation to the case, should be testified to by the persons by whom the papers were written, especially if those persons are at hand. In some instances General Fry is the author of the papers, is present and able to testify, but refuses to submit to an examination. In other instances, the authors of the papers are in Washington, and in all cases, or nearly all, the papers and their contents are irrelevant and foreign to any issue before the committee.

"2. The evidence, whether oral or documentary, does not establish or tend to establish or excuse any statement or charge in his letter read in the House of Representatives which General Fry is called upon to justify.

"3. They show no act or omission on the part of Mr. Conkling as to any matter pertaining to the present investigation.

"4. They show no frauds or misdemeanors, or blamable omissions on the part of any person whatever, except General Fry himself, and Haddock, his assistant, and other persons for whom he was officially responsible.

"5. They show nothing, whether right or wrong, connected with Mr. Conkling, pertinent to this investigation, or for which he was, or is, in any way chargeable or responsible, or with which he is brought into any relation for which any blame or improper act or omission can be imputed to him."

JUNE 5, 1866.

Mr. RIDDLE. I understand that we are called upon here to make explanations of this letter, and especially of the reasons why it was written, and the matters upon which we rely as showing that it was not written without sufficient authority. The letter does not charge specific offences upon any person in the twenty-first district of New York nor elsewhere; but it does allege that there are circumstances and conditions existing there which seriously demand investigation and prosecution. It alleges that Mr. Conkling was specifically appointed to investigate and to make those prosecutions. So far as appears from the letter, (and that rather negatively than otherwise,) Mr. Conkling was the sole person authorized and required to make these investigations. It alleges that he neglected and refused to make those investigations in certain localities indicated, and charges this in such a way that that neglect and omission amounts to a dereliction of duty, and a grave one on the part of Mr. Conkling. As I now understand, this committee call upon General Fry for his explanation of the reasons for his writing that letter. General Fry comes in here, in obedience to that requisition, and says: "I had certain letters, reports, papers, and writings from various official sources bearing upon the matter set up in my letter. In substance, I have no personal knowledge or acquaintance with the persons or facts in the locality indicated. I have written upon the information of others, and these papers I now produce, and to which I have made reference, are my sources of information and authority. I offer them in good faith."

Now, the committee may say, not that we will not consider these papers, nor any of them, but that we will consider them; and, of course, it is entirely competent for the committee to say that these papers do not warrant the statements made by the letter. They may say of this letter or of that order that General Fry had no business to consider it at all; he should have known that that was not information upon which he could predicate the statements of his letters. Although they may say he had a right to consider it, it does not tend legally or in any direct way to the conclusion to which he arrived, and which he stated in his letter, nor do all these papers taken together warrant or authorize the statement which he made in the form of that letter. And it is submitted that when the grave distinction is borne in mind that General Fry is called upon here to prove, not that these parties named in these papers were guilty, but simply to explain the reasons and circumstances why he wrote this letter; that he has a right to have received and considered by the committee these papers and statements and writings referred to, upon which he says he predicated the letter; that for that purpose they are primary evidence, not secondary, which is the principal objection made to them. That really although he should succeed in convincing the committee by competent legal proof adjudged to be such under the narrowest limitation of the severest rules recognized by judicial tribunals, in convincing the committee that the facts embodied in those papers were really true, yet if it should also appear to the committee that at the time that letter was written General Fry had not the knowledge but that he happened to guess the truth, that would not be a vindication or excuse for having written the letter. So, too, if it appears that the various writers of these documents were mistaken as to the facts which they report in good faith. Still, if they come to General Fry embodied in these papers and statements as they did, they may still furnish a basis for that letter, and they vindicate the writing, and it is specifically in that view of this matter these papers are offered.

The CHAIRMAN. The committee will permit proof of such frauds and misdemeanors in the district to which Mr. Conkling's supervision extended as are previously shown must have come to Mr. Conkling's knowledge in the exercise of reasonable diligence in the discharge of the duties which he may be proved to have assumed in that behalf.

JUNE 6, 1866.

C. A. DANA sworn and examined:

By Mr. HOTCHKISS:

Question. Mr. Dana, were you Assistant Secretary of War in 1864-'65?

Answer. Yes, sir.

Question. When did you become Assistant Secretary?

Answer. I do not remember precisely, but I think my first appointment was some time in the latter part of 1863.

Question. And you continued to act until when?

Answer. Until about the middle of July, 1865.

Question. Have you read a letter from James B. Fry read in the House of Representatives?

Answer. Yes, sir. I read it when it appeared in the *Globe*, at the time it was first published. I have not read it since.

Question. I call your attention to these words in that letter: "In April, 1865, Mr. Charles A. Dana, then Assistant Secretary of War, without notifying me, had Mr. Conkling appointed to investigate all frauds in enlistments in western New York, with the stipulation that he should be commissioned judge advocate for the prosecution of any cases brought to trial, and he was so appointed to prosecute before a general court-martial Major John A. Haddock." Is that statement true or false?

Answer. It is mostly false.

Question. I will particularize: Is it true or false that Mr. Conkling was appointed, or represented by anybody to do that or any such service, without General Fry being aware of that fact?

Answer. General Fry was informed by me that the Secretary of War had employed Mr. Conkling to prosecute Major Haddock. This was on the Monday on which we got the news of the fall of Richmond. I think it was the 3d of April, 1865.

Question. Was General Fry also informed the day previous—Sunday, the 2d of April—that Mr. Conkling had been called here by the Secretary of War for that purpose?

Answer. I do not recollect precisely what was said when General Fry came into my room, on that point; but I think it was said to him when he came to my room in order to converse with Mr. Conkling about this Haddock matter and to clear up some points in which the papers were obscure.

Question. Was that the 2d of April, Sunday?

Answer. Yes, if Monday was the 3d.

Question. Was it the day before Mr. Conkling was authorized to prosecute?

Answer. It was the day before I was instructed positively to issue the instructions. I was informed by the Secretary of War, who sent for me to come to his room, where I found Mr. Conkling, that he had requested Mr. Conkling to do this; that Mr. Conkling had not made up his mind whether he could or would, and the matter was held in abeyance. The next day, on Monday, the Secretary sent for me to prepare Mr. Conkling's instructions, and to send them to him (the Secretary) before signing them.

Question. Is it or is it not true that, on Sunday, the 2d of April, General Fry was sent to by you, and sent to more than once, to furnish the papers on file in relation to Major Haddock?

Answer. I do not remember with regard to the papers. I recollect that when on Monday I received orders from the Secretary to prepare Mr. Conkling's instructions, and give him all necessary authority, I then informed General Fry that the Secretary had employed Mr. Conkling for this purpose, and the Secretary had directed that he (Fry) should put into Mr. Conkling's hands at once all the papers of the case relating to Major Haddock. My impression is that previous to sending for General Fry, while Mr. Conkling was still deliberating whether he could under-

take the labor, we were looking at the papers. (I had some of them brought into my room, which Mr. Conkling desired to see with regard to making up his mind.) There was something in one of the papers which was not entirely intelligible, and General Fry was sent for to remove the doubt that remained in that paper.

Question. Did General Fry come to your room while the papers were there being examined, and was he informed that the papers were there?

Answer. Yes, sir. He came to the room, and was informed about the papers.

Question. Your attention is asked to this part of the passage that has been read: "Mr. Dana had Mr. Conkling appointed to investigate all frauds." Is it true or is it false that Mr. Dana had anything to do with having Mr. Conkling's employment for that purpose?

Answer. That is totally false.

Question. Your attention is asked to this: "With the stipulation that he (Conkling) should be commissioned judge advocate for the prosecution of any cases brought to trial, and he was so appointed." Is it true or false that Mr. Conkling ever had any commission or appointment except the letter of instructions, so far as you know?

Answer. I am not aware that he ever had any other.

Question. Had you anything to do, either directly or indirectly, with the authorization or employment of Mr. Conkling, except to put on paper the instructions of the Secretary of War?

Answer. Nothing whatever. My impression is that the Secretary had directed me to telegraph for Mr. Conkling to come here; but all I did in the premises I did entirely and exclusively in compliance with orders of the Secretary of War.

Question. Was there ever any contract made with Mr. Conkling on this subject by the War Department, to your knowledge?

Answer. Not to my knowledge.

Question. Your attention is called to this statement: "Mr. Dana vested him, by several orders issued in the name of the Secretary of War, without the sanction of Mr. Stanton, with the most extraordinary powers." Is that statement true or false?

Answer. That is not true.

Question. I put into your hands and ask you to read the three letters or papers delivered to Mr. Conkling on the 3d of April.

Mr. Dana then read from the supplement of the daily *Globe*, May 1. 1866, the following:

WAR DEPARTMENT, *Washington City, April 3, 1865.*

SIR: I am instructed by the Secretary of War to authorize you to investigate all cases of fraud in the provost marshal's office of the western division of New York, and all misdemeanors connected with recruiting. You will from time to time make report to this department of the progress of your labors, and will apply for any special authority for which you may have occasion. The Judge Advocate General will be instructed to issue to you an appointment as special judge advocate for the prosecution of any cases that may be brought to trial before a military tribunal. You will also appear in behalf of this department in any cases that it may be deemed more expedient to bring before the civil tribunals.

Very respectfully, your obedient servant,

C. A. DANA,
Assistant Secretary War.

Hon. ROSCOE CONKLING.

WAR DEPARTMENT, *Washington City, April 3, 1865.*

Hon. Roscoe Conkling having been appointed by the Secretary of War to investigate transactions connected with recruiting in the western division of New York, all telegraph companies and operators are respectfully requested to afford him access to any despatches which he may require for the purpose of detecting frauds and bringing criminals to trial.

By order of the Secretary of War:

C. A. DANA,
Assistant Secretary of War.

WAR DEPARTMENT, *Washington City, April 3, 1865.*

Hon. Roscoe Conkling having been appointed by the Secretary of War to investigate transactions connected with recruiting in the western division of New York, all provost marshals and other military officers are hereby directed to give him free access to all their official records and correspondence, and to furnish him certified copies of any papers that he might require.

By order of the Secretary of War:

C. A. DANA,
Assistant Secretary of War.

Question. Were any papers except the three just read delivered to Mr. Conkling in the nature of any authority to him?

Answer. None that I recollect.

Question. Your attention is asked to this statement, "with the most extraordinary powers." I ask you whether these papers, which you have read, did or did not, with reference to the usage of the department and its business, confer any extraordinary powers?

Answer. None whatever.

Mr. RIDDLE objected to the question and answer; that these papers were subject to the construction of the committee, not that of the opinion of the witness.

Mr. HOTCHKISS deemed it a question of fact and not of law.

The objection was overruled.

Question. Your attention is asked to this statement: "Among these was the right to examine despatches in all telegraph offices in the western division of New York, which enabled the violation of the sanctity of personal and business correspondence." Did you ever, or did any body ever, to your knowledge, give to Mr. Conkling any authority susceptible of that interpretation?

Answer. Never anything.

Question. Your attention is asked to this statement: "For his services in this connexion, Mr. Conkling received, on the 9th of November last, from the United States the modest fee of \$3,000." Have you knowledge of the length of time given, or the amount of labor performed by Mr. Conkling in this investigation and prosecution of Haddock and his accomplices?

Answer. I do not know when it was ended. I only know when it was begun. I was present by accident while passing through the city of Syracuse on the 15th of July.

Question. Will you state to the committee what, in your judgment, was a fair compensation for those services?

Answer. I should say that five or six thousand dollars would be a moderate and equitable compensation for those services.

Question. Your attention is asked to this statement in the letter: "Whether he received, as has been reported, from his district \$5,000 for the same service, and whether he received additional sums from guilty parties for opposing proceedings at Utica, I am unable now to say; but, as hereinafter shown, he was as zealous in preventing prosecutions at Utica as he was in making them at Elmira; and the main ground of difficulty between Mr. Conkling and myself has been that I wanted exposure at both places, while he wanted concealment at one." Do you know what, in truth and in fact, was the scope of Mr. Conkling's employment and authority in prosecuting offences in the district to which his investigations were limited?

Answer. My understanding at the time was, that Mr. Conkling was specially employed to investigate the transactions of Major Haddock; that, however, as it was considered probable, in view of the reports that had been received from various persons, detective officers and others that had been sent to that district, and a general notoriety that had arisen that other investigations than Major Haddock's might appear necessary in the course of trying Haddock; that he received general authority for the purpose of any collateral investigations that might arise in the course of the trial of Major Haddock.

Question. Was there, to your knowledge, any authority given or intimations made to Mr. Conkling that he was expected to act as counsel beyond the prosecution of Major Haddock, and such persons as might be found colluding with him, or such cases as might be involved in prosecuting him?

Answer. That was my understanding.

(Last two questions and answers objected to by Mr. RIDDLE. Objection overruled.)

WITNESS. Out of various reports that had reached the department respecting the transactions of Major Haddock, other cases had arisen. Before that the Secretary of War had not thought it necessary to undertake any special investigations of those; but with regard to Major Haddock's case he thought it necessary to undertake a special investigation, and he employed Mr. Conkling for that purpose, and employed him at the same time to investigate collateral cases in connexion with that, and that I understand to be the whole scope of the employment.

Question. Your attention is called to this statement: "As to the *animus* of Mr. Conkling's calumnious assault upon me, it is true (notwithstanding his assertion that he had no personal quarrels with me) that the differences between him and myself arose altogether from my unwillingness to gratify him in certain matters in which he had a strong personal interest. It is true, also, that he was foiled in his efforts to obtain undue concessions from my bureau, and to discredit me in the eyes of my superiors." During all your connexion with the War Department did anything whatever occur to your knowledge to justify or give color to this statement?

Answer. I should think not.

(Question and answer objected to as incompetent. Objection overruled.)

Question. Was there ever, to your knowledge, in the War Department any matter in which Mr. Conkling had a "strong personal interest" of any kind whatever?

Answer. Not that I am aware of.

Question. Was there ever an instance, to your knowledge, in which General Fry manifested an unwillingness to gratify Mr. Conkling in any matter in which he had a personal interest or any interest whatever?

Answer. I only remember the case of the removal of Captain Crandall, which Mr. Conkling remonstrated against. That is the only thing I recollect.

Question. Was there ever an instance, to your knowledge, in which Mr. Conkling attempted to discredit Mr. Fry in the eyes of his superiors?

Answer. Never.

Question. I call your attention to this statement: "The first (issue) arose in consequence of the removal of Captain Richardson (the first provost marshal of Mr. Conkling's district) upon a report of Judge Advocate Turner, that the proofs in his case disclosed a reckless persistence in fraudulent practices. Mr. Conkling complained of my action both to the President and to the War Department, but failed to procure any modification of my course." Do you know the request Mr. Conkling made with reference to Captain Richardson?

Answer. No, sir; I don't remember it at all.

Question. I call your attention to this paragraph: "I was called to Mr. Dana's office to have a verbal discussion with Mr. Conkling on the question at issue; but I had by this time learned too much of this gentleman to transact business with him in that way, and I declined to do so." Is that statement true or false?

Answer. I do not remember his "declining" to converse.

Question. Is it true, or not, that General Fry was called to your office to have a verbal discussion?

Answer. Not true.

Question. Is it true that during that interview, at any time, General Fry de-

clined to transact business with Mr. Conkling, or declined, in any form, any communication with him?

Answer. Not that I can recollect.

Question. Do you not remember, affirmatively and distinctly, that the contrary was true?

Answer. I remember that General Fry engaged in conversation, and that several things were said.

Question. Was there any reticence, or refusal, or reluctance on the part of General Fry?

Answer. I thought there was considerable frankness on his part.

Question. Your attention is asked to one more paragraph:

—"if, while acting as judge advocate under the extraordinary inquisitorial powers bestowed upon him by his friend, Mr. Dana, he came into the possession of any fact impugning or impeaching my integrity as a public officer, he was guilty of great public wrong and unfaithfulness if he did not instantly file formal charges against me with the Secretary of War. He can, therefore, only escape the charge of deliberate and malignant falsehood as a member of Congress by confessing an unpardonable breach of duty as a judge advocate."

Was there, to your knowledge, in any form, directly or indirectly, at any time, authority given to Mr. Conkling to investigate the acts of General Fry or to file charges against him?

Answer. Not that I ever knew of.

Question. Would it have been proper for him to file charges against General Fry, according to the usages of the department?

Answer. It would have been decidedly improper.

Question. I call your attention to this telegram:

WAR DEPARTMENT, *Washington City*, March 30, 1865.

Hon. ROSCOE CONKLING, *Utica, N. Y.*:

I am directed to request you to come here.

C. A. DANA.

Were you directed by any person to send that despatch?

Answer. I was so directed by the Secretary of War.

Question. Had you, prior to that time, caused detectives to be sent into the western division of New York to ascertain the source of the frauds?

Answer. I had directed Colonel Alcott to send detectives there. He sent two. My impression is their names were James Gall and ——— Carlyle.

Question. Was these men directed to apply to Mr. Conkling, among others, for such information as could be furnished?

Answer. They were. Their mission was a secret one. It had occurred before this despatch was sent, some time.

Question. Do you know whether Mr. Conkling came to Washington in answer to that summons?

Answer. I understood that he did.

Question. Did you see him here soon afterwards?

Answer. My recollection is, that Mr. Conkling came to me on that Sunday morning, rather early. He came in and told me that he was here in reply to that despatch. I told him it was from the Secretary of War, and he left me and went to see the Secretary of War.

Question. Will you state whether subsequently you found Mr. Conkling with the Secretary of War?

Answer. The Secretary of War after a time sent for me, and I went to him and found Mr. Conkling in his room with him.

Question. What was the subject of the conversation?

Answer. My recollection is, that the Secretary of War said that he had re-

quested Mr. Conkling to take charge of the investigation of the case of Major Haddock and of the recruiting frauds in that region, and he told me that if Mr. Conkling would undertake to do this, I was to prepare the instructions.

Question. Did he tell you what sort of instructions or authority was to be given?

Answer. He told me that before signing the instructions I was to submit them to him, but that generally I was to give Mr. Conkling every power and facility that might aid him in the performance of this duty.

Question. Do you remember whether the Secretary suggested to or directed Mr. Conkling to see Judge Holt in order to ascertain some facts or solve some doubts which he had?

Answer. I remember that he did, and directed me to give him a note to Judge Advocate Holt; and I remember that it was for the purpose of preparing that note that Mr. Conkling went with me to my room previous to my sending for General Fry.

Question. Did you hear in the conversation between the Secretary of War and Mr. Conkling, which you have referred to, any statement made, or see any memoranda shown, in reference to Aaron Richardson, or a "bounty-broker," whom it was proposed to use as a witness against Major Haddock?

Answer. I do not remember.

Question. Do you remember, before you left the Secretary's room General Fry was sent to by the order of the Secretary of War to furnish the papers on file against Major Haddock?

Answer. My impression is that the Secretary sent to General Fry and the general was not in his room at the time.

Question. How many times was General Fry sent to before they were forthcoming?

Answer. I don't remember how many times. I think about three times. I got the papers, although General Fry had not come in. The officer in charge of his office sent me the papers.

Question. Was General Fry sent for to come to your room?

Answer. Yes, sir; by me to see Mr. Conkling, and to give information with regard to some point in those papers which it was found difficult to understand.

Question. Did you introduce Mr. Fry and Mr. Conkling?

Answer. I did.

Question. Had they ever met before?

Answer. I don't remember. My impression was they had not.

Question. Do you remember the demeanor and manner with which General Fry entered your room?

Answer. My recollection is that General Fry seemed to be somewhat excited and constrained when he entered the room.

Question. Do you remember what he said about Major Haddock on that occasion, and his general manner?

Answer. So far as I can recollect, he expressed confidence in him; that he was sure he was honest and had acted right; but that as so much had been said about him he had relieved him, and that he intended to apply for an investigation of some kind, in order that he might vindicate himself.

Question. Do you remember his denunciations of those, and the language he used towards those, who talked against Major Haddock?

Answer. His language was strong, generally. He spoke in sharp terms of the people of the Utica district, generally.

Question. Do you remember how he characterized the persons, whoever they might be, who complained of or suspected Haddock?

Answer. My recollection is that General Fry said that those persons were all acting from interested motives; that they all had some corrupt object of their own.

Question. Will you state the substance of what General Fry said in reference to his wish or willingness, if anything, to have Major Haddock prosecuted by Mr. Conkling?

Answer. I do not recollect his mentioning that subject. He said he intended to have an investigation in order that Major Haddock might vindicate himself, but nothing in connexion with Mr. Conkling in reference to it.

Question. Do you remember Mr. Conkling's calling General Fry's attention to the statement that Captain Crandall, provost marshal of the 21st district, had enlisted men who received a smaller local bounty than the highest bounty paid?

Answer. Yes, sir.

Question. Do you remember Mr. Conkling putting a question in two forms to General Fry as to what, if anything, he (Fry) would have done differently from what Captain Crandall did if he had been there acting in Crandall's place?

Answer. The charge against Captain Crandall was that he had enlisted men for less bounty than that which was regularly paid, and that was regarded as an irregularity on the part of Captain Crandall. I remember Mr. Conkling's asking General Fry questions about it. One of those questions was what he would have done had he been in Captain Crandall's place, if the men had come to him proposing to enlist, taking a less amount of bounty, and General Fry said he did not know. And I think Mr. Conkling asked him what he would have *advised* Captain Crandall to do. He said again that he did not know.

Question. Did you hear that statement which General Fry thus made repeated to the Secretary of War afterwards by Mr. Conkling and by yourself?

Answer. I cannot swear positively about that. I have a vague recollection, but cannot say certain.

Question. Do you remember the language that General Fry applied at large to the people of Mr. Conkling's district?

Answer. I recollect that it seemed to me to be extraordinary, and excited my attention particularly. I could not swear to all the words used, but they were very violent and rather indecorous. General Fry said, if I recollect right, that the people of the district were "drunkards and thieves," and I don't know whether he said "sneaks" or "cowards," but that was the general style of his language. He said he thought the mass of the people were demoralized and dishonest.

Question. What was General Fry's conduct on that occasion as to being gentlemanly or the reverse?

Answer. As I said before, I thought his conduct was extraordinary.

Question. I ask whether his conduct was gentlemanly or the reverse?

(Objected to, and objection sustained.)

Question. I ask whether his conduct was violent and excited, or otherwise?

Answer. I should not say violent; that is too strong a word. He seemed to be constrained and excited, and to be like a man who was much more internally disturbed than he manifested externally; but I think his mode of speech was not proper, decorous, or gentlemanly.

Question. What was the conduct of Mr. Conkling upon that occasion?

Answer. It was perfectly quiet and gentlemanly.

Question. Was there any dispute or altercation?

Answer. No.

Question. Do you remember any question asked of you after General Fry left the room which fixes this in your mind?

Answer. I recollect that when General Fry made this remark to Mr. Conkling about the character of the people of Mr. Conkling's district, Mr. Conkling asked him if that was really his opinion, and he said it was. After General Fry left the room, Mr. Conkling asked me if I thought he had done right not

to resent this language. I told him I thought he had done right; it was much more judicious.

Question. Do you remember, in that conversation, Mr. Conkling informing General Fry why he came to Washington, and at whose summons?

Answer. He told him he had been sent for by the Secretary of War, and that it was in connexion with the Haddock affair. General Fry said, "I suppose you have come here to get something done in Captain Crandall's case, to get his dismissal revoked." Mr. Conkling then said not; that he had come because the Secretary of War had sent for him, and I think he added "on entirely different business."

Question. Do you know that Mr. Conkling did take a note from you to Judge Advocate General Holt, requesting him to give him such information on this subject as would enable him to see whether he had better undertake the employment or not?

Answer. He did. I wrote such a note and gave it to him.

Question. Did he afterwards return again to you?

Answer. I saw him again that day, not a great while afterwards.

Question. After this, was it signified to you that Mr. Conkling had determined to undertake this task?

Answer. My recollection of that is, that the first positive information I had of his determination to undertake it was the next day, when the Secretary of War had sent for me and told me that Mr. Conkling had concluded to undertake it, and that I was to prepare his instructions. I then went to my room and drew up that letter of instructions, brought it down and submitted it to the Secretary, and he corrected it. Then I gave it to Mr. Conkling, and gave him also those two other papers which have been read.

Question. Were all these papers made with the direct, or rather with the express, sanction and under the express direction of the Secretary of War?

Answer. The instructions were submitted to him. The other two may or may not have been; my impression is they were not; and the reason was that they were such simple routine papers as are ordinarily given in such cases, and because the Secretary had directed me to give Mr. Conkling every facility. I wish to state here for my own justification that it was never my practice to issue any papers of any importance without the direct instruction of the Secretary of War.

Question. State to the committee whether, on this same Monday before you went to Richmond, you gave to General Fry any directions as to the delivery to Mr. Conkling of all the papers relating to the Haddock case.

Answer. I told General Fry that the Secretary of War had employed Mr. Conkling to perform the duty of investigating the transactions of Major Haddock and his accomplices; and that the Secretary directed General Fry at once to put into Mr. Conkling's hands all the papers relating to the case. That was on the 3d of April.

Cross-examined by Mr. RIDDLE:

Question. By what means are you enabled, at this distance of time, to recollect these facts and details of conversation that you have recited, among the multiplicity of similar others?

Answer. I have been able to recollect them by the fact that they occurred in connexion with the fall of Richmond, the notoriety which the whole transaction has had from the beginning, and by reading the reports in the Globe.

Question. Have you received Mr. Conkling's own version of the matter here verbally, or by letter elsewhere?

WITNESS. What do you mean, sir?

Mr. RIDDLE. I mean to inquire whether you have had your recollection refreshed by means of Mr. Conkling in conversation with you?

Answer. No, sir.

Question. Have there been submitted to you, in writing or otherwise, the matters to which your attention would be called so as to enable you to recollect what transpired?

Answer. Mr. Conkling has told me that he intended to examine me on these points, and that he desired me to refresh my recollection about them. My recollection of the case has been also refreshed by the extraordinary attack upon me made in the letter of General Fry—an attack, the grossness of which I cannot too warmly condemn, and which has produced considerable feeling with me. When a person presumes to say that I have been in the habit while here in the War Department of doing things without the knowledge of the Secretary of War, and that I have got the Secretary to do things which he otherwise would not have done, I resent the imputation very seriously.

Question. Do you remember whether, previous to this telegram to Mr. Conkling, there had been any very considerable correspondence between Mr. Conkling and yourself in reference to the difficulties in that district?

Answer. I do not think there had; I received one or two letters, and referred them to General Fry, as they related to his department. There was one with regard to the removal of Captain Crandall; I am sure I did not read it all, but referred it to General Fry, after getting the drift of it. It was a matter that did not concern me or my particular duties.

Question. Do you remember whether, at any time prior to that, Mr. Conkling forwarded to the War Department any general statement of his opinion as to what did transpire, and what course had better be pursued in any part of the western division of New York?

Answer. Don't remember anything of that sort.

Question. Do you remember whether, at any time prior to Mr. Conkling's being telegraphed, General Fry himself, in person, called your attention to the condition of things in the twenty-first district, and requested you to write to Mr. Conkling in reference to them?

Answer. I do not recollect. I have a vague recollection of conversations with General Fry. I am not sure but that I may have sent Colonel Alcott to send those detectives on General Fry's suggestion. With reference to the investigations in New York with Colonel Baker we had a good deal of conversation; and Colonel Baker having said something about these affairs at Utica, it is possible I sent those detectives from General Fry's suggestion.

Question. Were you not conversant generally with these things in that district?

Answer. I don't think I could say that. I only know generally that there was wrong, corruption, and great desertion in the western division. I recollect now one conversation with General Fry, in which he told me that desertions of men enlisted at Utica exceeded those elsewhere.

Question. How did the Secretary of War come to telegraph for Mr. Conkling to come on here at the time he did; whether it arose out of a conversation between yourself and the Secretary?

Answer. It did not arise out of a conversation between the Secretary and myself. It arose from a letter of Mr. Conkling's submitted to the Secretary respecting some person there, whose name was not mentioned, who proposed to make important disclosures to the government if he could be protected. That letter was sent to me. I submitted it to the Secretary, and he desired me to send for Mr. Conkling.

Question. At that time did you know that the proposed disclosures had reference to the alleged fraudulent recruiting at Utica and that neighborhood?

Answer. I did not know what they had reference to. I don't think this letter stated the nature of the disclosures.

Question. Is there anything that now enables you to state the date of the reception of this letter?

Answer. This despatch was dated March 30. The letter may have been received on that day, for I carried it to the Secretary, and wrote the despatch in his office by his direction.

Question. I understood you to say that you were not aware that any of the correspondence of Mr. Conkling contained any reflection upon General Fry.

Answer. I do not remember that there was any.

Question. I wish to call your attention to this letter, (letter of Mr. Conkling to Mr. Dana, dated March 13, 1865, heretofore placed in evidence. See first day's proceedings.)

Question. Was that letter referred to General Fry as part of the correspondence?

Answer. That letter probably was not referred to him.

Question. Are you able to state whether it was not a letter that escaped your especial observation and was referred to him as appertaining to the duties of his office?

Answer. My impression is that it was not referred to him.

Question. Do you know whether it was sent to him or reached his hands?

Answer. I do not.

Question. Are you now able since reading this letter to remember, in the event it was not sent to General Fry, why it was not?

Answer. I should say it was not sent to General Fry for the reason that it presented a possibly contingent suspicion with regard to his conduct.

Question. Are you now able to state whether or not the note, of which receipt is acknowledged in that letter, was a note written by yourself to Mr. Conkling at the request of General Fry?

Answer. I do not remember at whose request it was written, nor the character of the note.

Question. Are you able to remember whether at the reception of this letter, and before the date of the telegram by which the Secretary requested the presence of Mr. Conkling, other letters were received from Mr. Conkling in reference to the matter spoken of then?

Answer. I do not think there were.

Question. General Fry was advised on Sunday that Mr. Conkling was here?

Answer. He saw him then. I don't know whether he was advised or not.

Question. I understood you to say that the interview which took place between the parties was through a message which you yourself sent for General Fry?

Answer. I sent for him to come to my room, but did not tell him what I wanted him for.

Question. And the purpose for which you sent for him was to have an exposition on those papers?

Answer. There was something in the papers that we did not understand, and then I said we would send for Fry. I could not swear to the identity of the papers, but they were in reference to Major Haddock. I don't remember the particular matter of which we sought an exposition. He was sent for simply to explain a doubtful point in them, whatever it may have been. I hoped by hearing the conversation which would ensue between General Fry and Mr. Conkling that some of the subjects might be explained, as I had heard a good deal of discussion.

Question. When did you observe this constraint on the part of General Fry?

Answer. I think when he first came in, when I introduced him and Mr. Conkling.

Question. Which of the parties opened the conversation in reference to the troubles in that district?

Answer. Do not recollect which it was.

Question. Do you remember whether his attention was called to this matter for which he was sent and by whom?

Answer. I don't remember. He made no explanation of the matter whatever. My impression is that it was forgotten and overlooked.

Question. Do you remember that he said he would not attempt a discussion with Mr. Conkling; that Conkling was a lawyer and he was not, and that he referred it to the records of his office or department?

Answer. I think there was something of that kind, but I cannot say positively what it was.

Question. Did he not decline to have any discussion with Mr. Conkling on the supposed difficulty?

Answer. I don't remember that. I should think not, for all the discussion that took place was of the nature of a general discussion.

Question. How early in the interview did he exhibit this deportment which falls under censure?

Answer. From the beginning.

Question. Did he not state in connexion with that matter that, "judging from reports that come into his hands," the character of those people was of the kind which you say he did?

Answer. It is very possible that that was the case.

Question. Did he not refer in that connexion, for the evidence for his opinion, to the papers and correspondence of his bureau?

Answer. I cannot say as to that. I rather think he did. He said, it was the worst district in respect of bounty-jumpers and desertions.

Question. And, as a matter of fact, was there not more of that thing there than anywhere else?

Answer. I do not know. The papers never came to me.

Question. Were you called out of that room and did you leave those parties alone together?

Answer. Not that I remember.

Question. Did you not go out and go to the Secretary's room during that time, and remain absent some little time and return and say to Mr. Conkling that the Secretary desired to see him?

Answer. I don't recollect it, and think it could not have happened, because we had just come from the Secretary's.

Question. What length of time did the interview between these parties occupy?

Answer. I should say ten minutes.

Question. Was it terminated by General Fry's going out?

Answer. It was.

Question. Now, upon what time was it made known to Mr. Fry the terms and conditions upon which Mr. Conkling had been authorized to act for the department?

Answer. There was never any occasion to make it known. I gave General Fry the Secretary's orders to him. There was no occasion to inform General Fry what other orders the Secretary had directed me to give.

Question. How early during the visit of Mr. Conkling here was that made known to General Fry?

Answer. It was made known to General Fry previous to our getting news of the fall of Richmond—at 10 o'clock, Monday, the 3d of April. It was certainly made known to him some time before these papers were made out.

Question. At what time did you leave that morning for Richmond?

Answer. I think I left the office about noon, and left the city between three and four o'clock. It was communicated to General Fry before we got this news.

It was after I had prepared the instructions of the Secretary. I am not sure of that absolutely.

Question. Do you know whether the papers referring to the Haddock matters and the other difficulties in that district were placed in the hands of Mr. Conkling by General Fry?

Answer. I do not know.

Question. When an investigation was ordered or contemplated in the affairs of a bureau, was it customary to advise the chief of that bureau?

Answer. No, sir, not unless the Secretary directed. In this case, however, General Fry was informed.

Question. How soon after that did you return from Richmond?

Answer. About a week or ten days.

Question. You stated of the paragraph read by you in this letter that its falsity consists in stating that you had caused or procured Mr. Conkling's appointment to this duty, and also in the fact that it was not communicated to General Fry?

Answer. I do not remember the words of the passage; but it is totally false in saying that I procured Conkling's appointment.

Question. Do you not know, as a matter of fact, that in the exercise of the duties of Mr. Conkling very serious complaints were made from the telegraph offices in New York?

Answer. No, sir. There was no reason why there should have been. He had no authority except to *request*. He had no power whatever to seize despatches, or look at private correspondence. They had a right to refuse. It is false in stating that I had Mr. Conkling appointed, and false in stating that General Fry was not notified.

Question. In the subject-matter of the letter of the 13th of March, had not Mr. Conkling a strong personal interest, and did he not evince it?

Answer. I should say that there was not a personal interest, but there was a public interest. Mr. Conkling had no interest whatever, to my belief, and could have had none, either of ambition or feeling, except as he might be interested in the public welfare.

Question. In that same interview to which reference has been had, the character of Major Haddock was discussed. Which of the gentlemen first spoke of that?

Answer. I don't distinctly remember. I may have been the first. I think I was.

Question. Do you know whether at that time General Fry had already ordered the suspension, or had procured the Secretary to make an order suspending Major Haddock from the exercise of his official functions?

Answer. I think Fry had made some suggestion.

Question. Do you remember whether on the morning of the first of April he came into your office and stated that he had procured the action of the Secretary in regard to the suspension of Major Haddock?

Answer. I do not recollect distinctly. I have a recollection that General Fry told me that he had intended to, but the day I cannot remember.

Question. Are you able to state that when that matter was first spoken of to you, it occurred to you that it was entirely new to you, or was spoken of to you before?

Answer. I do not remember.

Question. Do you remember whether in that conversation the official conduct or character of Captain Crandall was discussed between the parties referred to?

Answer. It was referred to by General Fry. He said to Mr. Conkling that he supposed he had come to get Captain Crandall reinstated; Mr. Conkling replied that he had not.

Question. Do you know whether, at that time, Mr. Conkling had had an interview with the Secretary?

Answer. He had.

Question. Did it in any form transpire what had been the subject or nature of the business that brought him here? Was it talked over in the conversation between him and General Fry?

Answer. I cannot say positively. I think, however, that it was.

Question. On what day was it that you got these papers from General Fry's office for the inspection of Mr. Conkling?

Answer. It was that same Sunday. I had sent for General Fry previously, in order that he should get the papers. I had sent for these papers before the interview.

Question. Do you remember whether the personal interview occurred before the time of church service, and that the papers were sent for at a later hour, and General Fry was absent to church?

Answer. It must have been time for church.

Question. Do you remember whether Mr. Conkling found much difficulty in entering upon the investigation of these matters?

Answer. I do not recollect. I have a remembrance, however, that there was some delay about getting the papers.

Question. Do you remember whether there were difficulties to overcome in the mind of Mr. Conkling to induce him to undertake this business?

Answer. There were on Sunday; but on Monday he made up his mind to do it. He did not determine until he had seen General Holt. He examined the papers to determine that very question.

By Mr. HOTCHKISS:

Question. Was it not some time after the receipt of Mr. Conkling's letter giving information that a person had offered to make disclosures to the government, that the Secretary directed a telegram to be sent to Mr. Conkling summoning him to Washington?

Answer. I remember that a letter had been received from Mr. Conkling inquiring whether a man who made disclosures of importance to the government would be protected, some time before, but how long before I cannot say; and that is the letter which I referred to in my answer to Mr. Riddle.

Question. Who did the most of the talking in this interview referred to—General Fry or Mr. Conkling?

Answer. General Fry.

Question. Do you remember, during that interview, resuming your seat for a while at your table and doing some business?

Answer. I do.

Question. Does that enable you to state whether that interview was much longer than ten minutes? What was the length of the time that General Fry was present in your room?

Answer. I cannot state exactly. After introducing General Fry and Mr. Conkling, I went and sat down at my table and attended to some papers, but don't remember distinctly the time occupied.

Question. Do you remember whether or not a good many different things were talked of in that conversation?

Answer. I should think not; I don't remember any further than the subjects of Crandall and Haddock; the character of the recruiting at Utica, and the character of the people of that district. I think the whole presence of General Fry in that room was from five to ten minutes.

Question. Do you remember whether Mr. Conkling, at any time after entering on the duties of this retainer, made to the department any report?

Answer. I never saw any formal report.

By the CHAIRMAN:

Question. You have stated, in substance, that Mr. Conkling was not expected

to investigate frauds except those connected with the conduct of Major Haddock, and such as were developed by his affairs or his conduct. Is that right?

Answer. Yes, sir.

Question. What was the extent of his (Haddock's) supervision?

Answer. It was what was called the western division of New York. He had general superintendence of recruiting.

Question. Had he supervision over all the provost marshal's department of that portion of New York?

Answer. Yes, sir.

Question. I see, in this authority that the Secretary of War issued, that Mr. Conkling is authorized "to investigate all cases of fraud in the provost marshal's department in the western division of New York." How was Mr. Conkling given to understand this, that you declared to have been the understanding between him and the department, that he was limited otherwise than expressed in his papers?

Answer. The appointment was given in connexion with Major Haddock's affairs, and that understanding was expressed in the conversation with Mr. Conkling. The written authority was made large in order to cover every case that might be developed in connexion with Haddock.

Question. Do you say that Mr. Conkling was informed that he was not expected to investigate any other matters than those that were indicated by your first answer in that regard?

Answer. My understanding was that Mr. Conkling was requested specially to investigate and prosecute the case of Haddock. I think the request was that he should prosecute it, and that this authority was made large in that way so as to cover all collateral cases; but he was not expected to go into frauds that might have arisen before. That was clearly understood by me and by him.

Question. It was stated that a commission would be sent to Mr. Conkling as special judge advocate. Was any such commission sent to him?

Answer. Not to my knowledge.

Question. Why?

Answer. It appeared that it had not been the practice of the Judge Advocate General to issue special commissions. When that authority was drawn I was under the impression, and I presumed the Secretary of War was, that such commissions were issued, but Judge Holt had not been in the habit, as it turned out, of issuing any commission or authority where gentlemen were requested to act merely as counsel.

Question. From your knowledge now of the practice and law of the department was a commission necessary or proper in that case?

Answer. I do not think it would have been important. It was not necessary, and the only reason for giving one would have been to cover a necessity. It was not omitted on account of anything that occurred afterwards.

Question. Was there any special order contemplated by this general order, or any further instructions issued to Mr. Conkling directing him to prosecute any other frauds?

Answer. No, sir.

Question. Was the matter of Provost Marshal Richardson, of Utica, ever brought by the action of the War Department within the notice of Mr. Conkling so as to make it a part of his business, or to authorize him to prosecute that case?

Answer. I think it was not. He had no instructions respecting it, and no request was ever made to him. I understood this matter had been put in the hands of the civil authorities.

Question. Can you state whether, by the regulations of the War Department, Mr. Conkling was acting as a judge advocate, or simply as an attorney for the government?

Answer. Only as an attorney for the government—as a matter of fact.

By Mr. RIDDLE :

Question. Was it the understanding from the War Department that a court-martial could legally exist for any purpose without a judge advocate specially appointed for that particular court?

Answer. I know that counsel very frequently had appeared before such courts, courts-martial, or military commissions.

By Mr. HOTCHKISS :

Question. Do you happen to remember that in these suspicions against Major Haddock one civilian, who held a State office, was included, and perhaps some others?

Answer. Judge Smith was.

Question. Do you remember the question arose whether he could be tried, as well as Haddock, before a military tribunal of any sort?

Answer. I do not know.

WASHINGTON, *June 6, 1866.*

Hon. E. M. STANTON sworn and examined.

By Mr. HOTCHKISS :

Question. How long have you been Secretary of War?

Answer. Since January 20, 1862.

Question. Have you read the letter of James B. Fry, which was read in the House of Representatives some time ago?

Answer. I have, sir.

Question. Did you ever see that letter before it was sent to Congress?

Answer. I never did. If I had, I think it never would have been sent.

Question. Did you ever give any permission or authority to take from the records of the War Department the papers and exhibits which accompany that letter for any such purpose?

Answer. Not for any such purpose.

Question. Did you know that they were to be used for any such purpose?

Answer. I did not.

Question. Is it a violation of the rules of the War Department for the head of a bureau to take from the department records without the knowledge of the head of the department?

Answer. It is a violation of the rules of the department. I think it is proper to say a word in regard to that matter. On one occasion General Fry stated that he anticipated that some attack would be made upon him, and asked me if I had any objection to his making a defence of himself. To which I replied that I had no objection to any officer making a proper and legitimate defence of himself on any proper and suitable occasion.

Question. Did General Fry indicate in what form he expected to make his defence?

Answer. I do not think anything was said about that. Perhaps I ought to say, however, in further explanation, that if I had supposed General Fry intended to use the telegrams of this office, or any of its papers, for the purpose of making a charge against a member of Congress for anything he had said on the floor of the House, I should not have given him that permission.

Question. State, if you please, the knowledge that you have from the commencement of Mr. Conkling's connexion with the prosecution of Major Haddock.

Answer. Some time in the latter part of March, 1865, my attention was called to the subject of alleged abuses and frauds practiced on a large scale in the provost marshal's district of which Major Haddock was the chief. About the

30th of March it was communicated to me, I think by Mr. Dana, that there was a person who was cognizant of facts in relation to those alleged frauds that could afford information useful to the government if that person was himself made secure against prosecution or punishment for his participation in those offences. I directed Mr. Dana to telegraph to Mr. Conkling to come here. I suppose the date of the telegram was the 30th of March—the same day I received this information. It appears from a paper which I now have in my hand to refresh my recollection of dates, that on the 31st of March a report was made in regard to those frauds by an inspecting officer, Major Ludington, who had been sent to New York for the purpose of investigating them. I think that report was first placed in my hands by General Hardie, the inspector general, on the 1st of April, and I directed him to hand it to General Fry. It appears that on that same day General Fry made a report to me, in which he recommended that Major Haddock be relieved from duty, and that his conduct be investigated.

I determined then that if Mr. Conkling, with whom I had an acquaintance, and whom I knew as an able lawyer, would take charge of that investigation upon his arrival here, that I would endeavor to induce him to do so, and place the investigations under his direction. That was the conclusion I had formed before the arrival of Mr. Conkling here. Whether I mentioned it to General Fry on the same day that Mr. Conkling was to be here, I cannot now distinctly assert. On Sunday morning, the 2d of April, I was in my room in the War Department, and Mr. Conkling came there, either alone or in company with Mr. Dana, but I think alone. On passing the salutation, he told me that he was here by my order, and wished to know what my business was. I then told him there were great frauds alleged to have been practiced in that department, which were charged upon Major Haddock, and others in connexion with him, which I wished to have investigated, and if possible to have the offenders brought to justice; that I considered a diligent and rigorous investigation absolutely essential to the national safety. We were at that time engaged in the midst of a draft; Grant had commenced his movements; everything depended upon keeping the army up, and the means of keeping the army up was the *diligent and vigorous* recruiting which was then going on. We had some further conversation upon the subject. Mr. Conkling expressed himself very reluctant to engage in it. He said he was willing to aid the government all he could, but that it was a work that would take a great deal of time and labor, and that he was not sufficiently acquainted with military procedure to know whether he was a competent person to do it. He thought that it required military rank. I told him that was not necessary, he could be specially assigned by my order to that duty; that had been the practice; a large number of criminal cases had been prosecuted by persons who had not held the office of judge advocate, but who were specially assigned in particular cases to do that duty, and it required nothing more than my order as the head of this department to do that.

I advised him also to see the Judge Advocate General, who was familiar with the mode of procedure, and told him, moreover, that he should have the aid of the Judge Advocate General to prepare the charges, and advise him from time to time as to what was to be done, and that he should have the whole assistance of the government in prosecuting to effect.

One other point occurred to my own mind, which I think was mentioned at the same time, and that was, how far it would be competent for him to conduct this prosecution, he being a member of Congress elect, of which I was aware. On that question I told him there was no difficulty at all; that in my view he was not disqualified as a member of Congress until Congress met, and he was admitted and sworn in as a member; but whether that was so or not, that this was not an *office* but the assignment to a public duty, having in no sense the quality of an office. My view of the law was at the time that an office is a

right to exercise a public function or public employment, and to demand the fees and emoluments pertaining to that office; and that inasmuch as this was only a special authority or assignment of duty, that it was no more than if I called on him to shoulder a musket in the ranks; and I thought he was as much bound to use his legal knowledge in aid of my carrying on the war as to shoulder a musket to drive the enemy out of this department.

This conversation was very full, and I insisted upon it. Mr. Conkling spoke of his objections, but I insisted that he was not at liberty to deny me the benefit of his services. He mentioned some other person who he said was competent, and might undertake the investigation; that person was, I think, Judge Ward Hunt; to which I replied that I knew Mr. Hunt was reported to be an able and patriotic lawyer, but I felt satisfied that Mr. Conkling could do the duty to my satisfaction, and that as so much had been said in regard to this case I meant to have it done by a person who I knew was competent; and in order to remove all difficulty on his mind I told him to see Judge Advocate General Holt further. It is due to Mr. Conkling from me, as this charge has emanated from this department, to say that if there was anything wrong in his taking that duty at that time, the wrong rests on my shoulders, and not on his. I am the person that ought to be responsible in the public judgment, for forcing upon him what I regarded to be a public duty; and I had no other reason for forcing it upon him only that I thought it a vital duty, and I knew him to be competent to perform it.

In the course of the conversation I sent for Mr. Dana and told him to prepare the papers, and that if Mr. Conkling should conclude to render to the government the services I required, that he should prepare the papers and bring them to me, and to take care that they should be ample, and that all the authority of the department should be vested in him to prosecute these persons to the utmost rigor and effect in law. Mr. Conkling then left my room and went into Mr. Dana's room, and I saw no more of him until next morning. I am not certain that I saw him afterwards, but it was communicated to me by either Mr. Conkling or Mr. Dana, that Mr. Conkling had seen Judge Holt, and that Judge Holt's views corresponded with mine as to the legality of these investigations being conducted by Mr. Conkling, and that he (Mr. Conkling) did not feel himself at liberty to refuse to perform the duty.

Whether these papers (Mr. Dana's instructions to Mr. Conkling) were exhibited to me after they were written, I cannot undertake to say. They are in conformity with instructions I had given. In regard to the other two papers, one in relation to telegraph companies, and the other in regard to provost marshals, those are authorities which I do not remember to have seen until I saw them in this publication, (*Daily Globe*, May 1, 1866;) but they were proper authorities. If my attention was called to it, I gave the authority. I do not understand the first paper as giving him any right to make use of private despatches in any way, but to be a *request*, only, to telegraph officers to afford him facilities for *detecting frauds*, and bringing criminals to trial. But, even beyond that, if the application had been necessary, I should have given him an order authorizing him to seize upon any information or despatches that would have enabled him to detect the frauds in recruiting, the bounty-jumping, &c., that were depleting our army.

The other, as to the provost marshals' giving him free access to their records and correspondence, is a general authority which is given in all such cases, and is necessary for any persons engaged in these investigations to exercise. I do not know that anything further occurred within my personal knowledge, after that day, in regard to this. I had no subsequent personal knowledge relating to the case until the record was presented to this department, the record of Major Haddock's conviction. And upon examination of the record it became my duty, as I thought, to make an allowance to Mr. Conkling, of what I should consider a reasonable compensation for the time and labor that he had bestowed upon the

public service. There had been no contract or anything said upon the subject. But the work having been done, and having resulted in a conviction of the offender, and in the collection of a fine of ten thousand dollars, paid into the public treasury, I felt I would be guilty of great injustice if I did not make to Mr. Conkling a reasonable allowance or compensation for his services. I made the allowance of three thousand dollars upon my own motion without any suggestion from him, and without the claim or demand of that or any other sum. I hesitated in my own mind whether I ought not to allow him half of what was recovered, in view of the time and labor given by him; I believed the compensation allowed by me to be a moderate and reasonable one. If it is not, the fault is mine. I am responsible for having paid him more than reasonable compensation if he received more. I believe it is not more than a reasonable compensation for his time, trouble, and labor on that occasion, and as such, by my own act, I directed that sum to be paid him. Any imputation upon Mr. Conkling in regard to that sum or any other sum relating to this transaction is unjust to him, and should rest upon me; but I had never heard it questioned until I saw this publication.

Question. Please state whether Mr. Conkling was directed or authorized to institute prosecutions against any persons disconnected with Major Haddock, having nothing to do with that matter.

Answer. I do not think that Mr. Conkling had any such power. The authority, on its face, speaks for itself, and it is proper for the committee and Congress to determine what it imported. Major Haddock was the chief of the department. It was alleged that he had accomplices, that these frauds were the result of combinations and conspiracies, official and non-official, for the purpose of plundering the public treasury. To confine the power simply to Major Haddock's case would have been ineffectually narrow. The power was therefore given him to investigate everything in connexion with that transaction, and it would have been unwise for the government to limit it or confine the investigation within a narrower compass than is expressed in the papers. But the assignment of Mr. Conkling on the court-martial determines the question. The order detailing the court and assigning him to act as judge advocate is for the trial of Major Haddock, and no other person. The following is a copy :

[Extract.]

Special Order No. 227.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, May 15, 1865.

36...A general court-martial is hereby appointed to meet at Elmira, New York, at 10 o'clock a. m., on the 17th day of May, 1865, or as soon thereafter as practicable, for the trial of Major John A. Haddock, 12th regiment Veteran Reserve Corps.

DETAIL FOR THE COURT.

Colonel John Irvin, 149th Pennsylvania volunteers.

Colonel Edmund L. Dana, 143d Pennsylvania volunteers.

Brevet Colonel T. B. Hamilton, 62d New York volunteers.

Lieutenant Colonel James Glenn, 149th Pennsylvania volunteers.

Lieutenant Colonel John S. Hammell, 66th New York volunteers.

Hon. Roscoe Conkling is appointed judge advocate of the court. No other officers than those named can be assembled without manifest injury to the service.

The court will sit without regard to hours.

By order of the Secretary of War :

E. D. TOWNSEND, *Assistant Adjutant General.*

Official :

B. WILLIAMS, *Assistant Adjutant General.*

This order is in accordance with the general practice. The court-martial proceeds upon a special order issued from this department detailing a court, and assigning a judge advocate as a member of that court, for a specific trial. All Mr. Conkling could do, in respect to other persons than Major Haddock, would

be to prepare the charges or proofs against others besides Major Haddock, and then it would require an order of the department detailing this or some other court, of which he might or might not be a member as judge advocate, for the purpose of bringing those cases to trial. Unless in that order it had been specified that other persons were authorized to be brought before that court, then there must have been another order issued to bring the persons to trial before that or some other court; but even then it was necessary that charges should be prepared by the Judge Advocate General, or approved by him or the Secretary of War, before any person could be put on trial. Mr. Conkling could put nobody on trial except by the special order of the department detailing the court, and constituting Mr. Conkling a member of it, and authorizing him to act as judge advocate.

Question. State, if you please, whether the assignment by an order of any person, whether a civilian or a military man, to act as member of a court-martial, constitutes the appointment to office in any sense whatever.

Answer. A judge advocate is, in a general sense, a person authorized by competent authority to prosecute in the name of the United States military officers before a military tribunal. Under the English system they are of three kinds, perhaps four. First, the judge advocate general, who is appointed by the sign-manual of the sovereign. There is a second class who are commissioned by the crown as other crown officers. There is a third class who are sometimes called in the English law "deputy judge advocates," and may be appointed by the judge advocate general, or fourth persons may be appointed or assigned to officiate as judge advocates by any commanding officer who is authorized to convene a general court-martial.

Under our system there has been considerable modification during the present war, arising out of the exigencies of the public service and by general analogies and military usages and practice rather than by any positive authority. Under the act of 1802, I think there was but one judge advocate. At another period, perhaps 1812, there was a judge advocate for each division of the army. At another period there were three judge advocates for each division of the army. Under the act of 1849, there was but one judge advocate commissioned as such officer. (See Military Laws, p. 403.) Under that law, although there was but one officer commissioned as judge advocate, yet courts-martial were held everywhere that our forces were, and a special judge advocate was appointed by the commander that convened the court, because it is an element of military law that there cannot be a court-martial without a judge advocate. He is an essential member of the court, and the persons who officiated as judge advocates under the act of 1849 were appointed by the authority convening the court, who designated some one to act as judge advocate; usually it was some officer in the army. In the naval practice in England, it is said by some writers, they have always taken them from civil life. In the English practice of courts-martial the judge advocate general is a distinguished barrister who is in the confidence of the minister; but there is no qualification necessary in a judge advocate in a general court-martial except that he be a person competent in the opinion of the person convening the court. That class of judge advocates are, therefore, not "officers" in the general sense of a public officer, having a right to perform a public duty and receive the fees and emoluments therefor, because there is no fee nor emolument, and no pay attached to that duty. Under the rules and regulations a small per diem of \$1 25 to cover additional expenses is allowed to officers assigned to act as judge advocate. But he is simply authorized by the order to prosecute the case in the name of the United States.

After the war had been prosecuted for some time, and our forces were in the field, it was found that the system of one judge advocate was wholly inadequate to the purpose of military justice. By an act of Congress, therefore, a Judge Advocate General was authorized to be appointed, by and with the advice and

consent of the Senate ; and by a subsequent act (20th June, 1864, 13 Stat., 145,) a Bureau of Military Justice was organized, and a Judge Advocate General, with the rank of brigadier general, and an assistant judge advocate general, with the rank of colonel, were authorized to be appointed by the President, by and with the advice and consent of the Senate, who were regularly commissioned with fixed rank and pay in the military service.

A prior act, passed July 17, 1862, (12 Stat., 198,) authorized the President to appoint a judge advocate, with the rank and pay of major, for each army in the field. They were appointed by the President, by and with the advice and consent of the Senate. They are *commissioned* judge advocates. So the Judge Advocate General and his assistants were appointed by the President, by and with the advice and consent of the Senate, with a fixed rank and a fixed pay. But that machinery, although it enlarged the powers, was wholly inadequate for military purposes ; and by analogy to military usages that prevail in England and our own army, every commanding officer of a department or of a corps, or the Secretary of War, or whoever was authorized to convene a general court-martial, designated some person whom he authorized, by the order detailing the court, to prosecute as judge advocate.

Question. Will you be kind enough to state, then, whether, if such an assignment constitutes an appointment to office, a major or colonel thus assigned would not be made to hold two offices ?

Answer. Undoubtedly. I was going to add that, of the many cases on record in the Bureau of Military Justice, there is not, I suppose, one-tenth, perhaps not one-twentieth, that are prosecuted by commissioned judge advocates. They are prosecuted by judge advocates, as I remarked, specially assigned to officiate as judge advocates in the particular cases by the officer convening the court, to which there is neither rank nor pay attached, nor emoluments of any kind. In the majority of cases, the duty, as has before been stated, is usually assigned to some junior officer, simply because it is convenient. A person may be assigned who has a military rank and office, but his commission bears no relation to the duty as judge advocate ; and under his military commission he could not perform the duty. His authority as judge advocate is derived from the order convening the court and authorizing him to perform that duty. This class of judge advocates are never appointed by the President. The Senate knows nothing about them, and there is no pay except the \$1 25 per diem allowance, to cover expenses, in case of military officers, under the rules and regulations before mentioned ; and the only authority they have is that which is contained in the order received from the officer convening the court.

Question. I would ask whether the fact of assigning a lawyer to prosecute a case before a military court constitutes his appointment to an office any more than if he were employed to prosecute the case before any other court ?

Answer. I do not regard the assignment of a duty as the appointment to an office in any legal sense of that term. It is an authority to do certain things according to the rules and articles of war and military law and usages, but no more an appointment to office than an assignment to the other members of the court-martial ; because it is to be borne in mind that the court itself is appointed by the same authority that appoints the judge advocate. He is a member of the court, and the persons detailed in the order are all members of the court ; and you might as well say that every one of the thirteen judges who may happen to be detailed for a court-martial have been appointed to thirteen different offices, as to say that the judge advocate is appointed to an office. In the Revised Regulations of the Army, sections 1137, 1138, 1139, and 1140, provide for expenses of courts-martial. Extra allowances are made therein to military officers in view of additional expenses which they may be put to, and to the judge advocate, when he is employed in the duty of the court. This is an old regulation made by the Secretary of War himself, and it never has been, during the recent

war, applied to any case of a special nature requiring services of an important character or labors of an extraordinary nature. The same power that made the rules, to wit, the Secretary of War, has the power of revoking or departing from them; and I never would be guilty of the absurdity of offering the pay of one dollar and twenty-five cents per day for the purpose of compensating him for the duties of judge advocate in cases of this nature. I should have considered that I had discredited myself and the office I held if I had supposed that that regulation bore any relation whatever to cases of this nature.

Question. Will you be good enough to state to the committee whether, at the time you gave this direction to Mr. Conkling, you knew or did not know that he deemed Captain Crandall an honest man, and whether there were any instructions or expectations in relation to prosecuting him?

Answer. I never heard anybody impute to Captain Crandall any dishonesty. I never knew that it was contemplated by anybody that he would be prosecuted. I have not to this day, so far as I remember, ever heard any charges against Captain Crandall. He was removed at the instance of the Provost Marshal General on account of irregularities that had occurred in his district, but I never understood from him that he imputed dishonesty to Captain Crandall, or supposed that he ought to be prosecuted.

Question. Was there any expectation or authorization to Mr. Conkling to go back and prosecute Captain Richardson, who at a previous time had been provost marshal there of that district?

Answer. Not to my knowledge.

Question. Will you state whether Mr. Conkling brought to your knowledge, when here on the occasion spoken of, the fact that there was a person who held no office, but had been engaged in recruiting, and who was willing to furnish evidence to the government if it would not be used against himself?

Answer. I remember that Mr. Conkling mentioned there was a person who could give evidence material to the government, provided he was himself secured against prosecution. I refused to give any guarantee of that character, but told Mr. Conkling that if this person was cognizant of any of the matters of which he had the investigation, it was competent for him to use that person as a witness; and if he was satisfied that he testified fairly and truly, the practice of the department never was to prosecute such persons.

Question. Will you state whether it was, in fact, a proper or an improper thing, under the direction and authority you gave, to use that witness against Major Haddock?

Answer. I think it was perfectly proper to use him. It was left to the discretion of Mr. Conkling, and I have no reason to doubt that his discretion was soundly and properly exercised.

Question. Was there any obligation resting on Mr. Conkling to continue his acts as counsel after the prosecution of Major Haddock was completed, and the record was consummated and transmitted to this department?

Answer. In the prosecution of Major Haddock to final judgment Mr. Conkling performed all the duty that I expected him to perform, and I considered his relations to the department closed when that prosecution closed.

Question. And were you satisfied with the manner in which he performed that duty?

Answer. Most certainly. If I had not been I should not have paid him.

Cross-examination by Mr. RIDDLE:

Question. If, in the prosecution of Major Haddock's case, it had come to the knowledge of Mr. Conkling that other parties were connected with Haddock in frauds, was it expected that he would in some form call the attention of the department to those other cases?

Answer. It was not expected that he would prosecute them. He had no

power to prosecute them until charges were prepared and approved by the department and the court-martial detailed; but in my judgment it would have been the duty of Mr. Conkling to report to this department any facts in regard to the guilt of any persons engaged in those transactions if the evidence was not already known to the Provost Marshal General or the Secretary of War.

Question. If, in the course of that investigation, among persons supposed to have been involved in these frauds, it has come to the notice of Mr. Conkling that the Provost Marshal General himself was implicated in these frauds, would it then have been proper for him to have notified the head of the War Department of the facts that would implicate the chief of that bureau?

Answer. If facts affecting the honesty and integrity of the Provost Marshal General or his proper administration of the office had come to the knowledge of Mr. Conkling, I think it would have been his duty to report them to the Secretary of War for his action. But it would not have been his duty to report suspicions or charges or imputations made by others unless he had substantial proof of their probability.

Question. State, if you please, whether in the administration of the department you consider it customary and proper when you order an official investigation in the affairs of a bureau to make that known to the chief of that bureau?

Answer. I think that it was proper to make it known to the chief of the bureau. The fact that Mr. Conkling was authorized to prosecute this case against Major Haddock was known to General Fry, was communicated to him by me, and a subject of frequent conversation between us.

Question. The fact of Mr. Conkling's authority to prosecute Major Haddock?

Answer. Yes, sir. I did not think it was a matter of any *right* to General Fry to know anything about those papers. There was no reason why he should not have known it. No person could have any object to conceal it from him. I do not know that he saw those two papers, but General Fry did know that Mr. Conkling had authority to investigate this subject, and the fullest authority which could be given by the order of the Secretary of War to accomplish that object, and in the prosecution of Haddock that necessarily involved the investigation of all the operations of the bureau in that district. I never supposed General Fry wished to conceal anything in regard to the operations of the bureau in that direction or anywhere else. I have no reason to suppose that General Fry would not have been willing and anxious to afford every facility for most thorough investigation, and if he had had any objections I should not have considered him in the line of his duty.

Question. I wish to inquire whether or not it did not come to your personal notice that General Fry, in the course of the investigations of the Haddock frauds, contributed, so far as his official relations to the matter permitted, all in his power to aid that investigation?

Answer. I do not know what General Fry contributed, or was called upon to contribute, in regard to it. If I had known or suspected that he was withholding any information, or trying to cover up Haddock's crimes, I should have removed him from the office.

By Mr. HOTCHKISS:

Question. Was it in any sense the duty of Mr. Conkling to make to the Secretary of War any separate report of matters which appeared fully and at large in the record of the Haddock court-martial?

Answer. It was not his duty, for the reason that the whole record, when signed by the court, was required to be transmitted to the Judge Advocate General, whose duty it was by law to review the evidence appearing upon the record, and whose practice it is to call the attention of the department to any further investigation there should be in respect to every person implicated in the

proceeding. It was my view that the whole duty of Mr. Conkling was performed when the record was returned here, and I made my allowance of what I deemed a reasonable compensation for the labor.

Question. Did you ever know that it took about a month after the 3d of April to obtain from General Fry the papers relating to Major Haddock?

Answer. I do not know any of the details after the 3d of April, until the record was returned to this department. When the papers reached Mr. Conkling, or when General Fry was called upon for them, never reached my knowledge.

Question. Did you ever authorize General Fry to withhold any part of the papers relating to the Haddock investigation, either finally or for a time?

Answer. Certainly not.

By the CHAIRMAN :

Question. I would like to ask whether the judge advocate is required by the usages to take an oath of office?

Answer. He is not required to take an oath of office, but he and every other member of the court are required by law, as their first act on convening, to take an oath which is prescribed in the Articles of War. (Rev. Army Reg., p. 495.) The duties of the judge advocate are to swear the witnesses, and upon the convening court to swear the members, and is sworn himself. He records the evidence and advises the court upon questions of law. Under former practices the ancient theory of the English common law prevailed; the judge advocate was regarded as counsel for the prisoner as well as prosecutor, and parties before courts-martial were not allowed to have other counsel; but, under our system, all that is changed, and parties on trial are allowed to take their own counsel. The record is signed by the court, and the judge advocate also certifies it. Under our practice he is consulted by the court upon the law. He has no power of deciding, but simply advises, and may be overruled. When the court is cleared for deliberation he remains and advises upon the law, but does not vote. He is also an executive.

WASHINGTON, *June 7, 1866.*

The following rulings by the committee were ordered to be entered on the record:

1st. In trying the charges against Mr. Conkling, the committee will not go into or determine upon the propriety or motives of General Fry's letter containing these charges except so far as they are involved in disposing of said charges against Mr. Conkling.

2d. The committee will hear any evidence which may be offered, and which is competent, tending to show that Mr. Conkling's conduct, while assuming to discharge the duties of a judge advocate in 1865, was such as to prevent the prosecutions of frauds in the recruiting service in his district; whether by affirmative acts preventing such prosecutions, or by showing that he assumed to make such prosecutions, and, while under such obligations was guilty of gross and wilful neglect of duty in omitting to cause such prosecutions.

3d. Under the above rulings the committee will permit the letter from the files of the War Office, being a letter by Judge Advocate L. C. Turner to General Fry, dated 21st December, 1864, charging that Provost Marshal Richardson, of Utica, had been guilty of gross frauds, to be given in evidence for the purpose of showing, and as tending to show, what means Mr. Conkling had access to, of finding what frauds were officially *charged* to have been committed in his district. The paper will not be received to prove that frauds were committed, or that Mr. Conkling knew of them, but solely for the purpose aforesaid, and as throwing light upon the question of gross negligence in omitting prosecutions.

The report was presented in evidence, and is as follows :

WAR DEPARTMENT,
Washington City, December 21, 1864.

GENERAL: I have the honor to return to you the papers in the case of Captain Richardson, provost marshal 21st district New York, and respectfully recommend that said Richardson be at once arrested and held in custody for trial by court-martial. The proofs in this case disclose a reckless persistency in fraudulent practices that not only demand his arrest and trial, but also a complete renovation in the office of said district.

It appears that he has or had \$5,000 in bank to his credit as provost marshal; that bank (Bank of Utica) should be advised to hold said money subject to the order of the Secretary of War.

I am, general, very respectfully, your obedient servant,

L. C. TURNER,
Judge Advocate.

Brig. Gen. JAMES B. FRY,
Provost Marshal General.

A true copy:

C. McKEEVER,
Brevet Brigadier General and A. A. General.

The following papers were also presented under the ruling of the committee by General Jeffries, and received in evidence :

HEADQUARTERS 192D REGIMENT NEW YORK VOLUNTEERS,
Albany, February 4, 1865.

COLONEL: I have the honor most respectfully to protest against the reception of recruits for the one hundred and ninety-second regiment New York volunteers who are mustered by the provost marshal at Utica. The men who have been received at the Veteran Reserve Corps barracks from that city are, without doubt, "bounty-jumpers," and should not have been mustered by any intelligent mustering officer.

Very respectfully, your obedient servant,

N. G. AXTELL,
Colonel 192d Regiment New York Volunteers.

Lieutenant Colonel F. TOWNSEND,
Superintendent Recruiting Service.

A true copy:

C. McKEEVER,
Brevet Brigadier General and A. A. General.

HEADQUARTERS DRAFT RENDEZVOUS,
Elmira, New York, February 20, 1865.

MAJOR: The twenty-first district of New York is evading General Order 305. Men from that district bring with them to general rendezvous from twenty to twenty-two dollars each. The supervisors have taken some action with a view to evade the order. The district is filling its quota with bounty-jumpers. Fifteen deserters from Auburn in one squad.

This is giving to this district an undue advantage over the other districts. There is now a rush of bounty-jumpers for Utica. Major Haddock, acting assistant provost marshal general, declares himself powerless to correct this evil. I enclose telegrams from him to the provost marshal at Utica which show his views of the subject. General Order No. 305 is worthless, and should be revoked, unless the recruits are required to bring their money to general rendezvous. Unless this is stopped at once, other districts will be compelled, in self-defence, to resort to the same dodge, and one of the best orders ever issued become a nullity.

I suggest that commanding officers of rendezvous be instructed to refuse to receipt for any recruit and substitute from this district unless he brings with him his local bounty or the amount paid him for becoming a substitute.

I am, major, very respectfully, your obedient servant,

B. F. TRACY,
Colonel 127th U. S. C. T., Commanding Rendezvous.

Major H. CLAY WOOD,
Assistant Adjutant General, Washington, D. C.

A true copy:

C. McKEEVER,
Brevet Brigadier General and A. A. General.

HEADQUARTERS CAMP SEWARD,
Auburn, New York, March 4, 1865.

SIR: I have the honor to lay before you the following items in regard to the provost marshal's office at Utica. I learned from two apparently reputable men from Utica that the business at that office is conducted in the following manner: the supervisors of the county met and re-

solved to pay a county bounty of \$600; they met again and resolved to add \$125 to the \$600, making \$725 local bounty to be paid by the county; they then resolved themselves into a recruiting committee to furnish the quota of the county; they get the men at as low a figure as they can and charge the county the full amount of \$725. The provost marshal and the examining surgeon seem to be but the creatures of these supervisors. Men rotten with venereal disease, totally unfit for any duty, are passed by the surgeon and sent here for duty. One old man, just discharged for disability, having the piles badly, before he got to his home, was grabbed by these Utica harpies, put through by the officials, with, as he alleges, but \$190, somebody pocketing the balance, and sent here. He is utterly worthless as a soldier. Nine-tenths of the recruits sent here from that office are the most worthless set of scoundrels you ever put your eyes upon.

I am, very respectfully, your obedient servant,

JAMES L. LOTT,

First Lieutenant 19th V. R. C., Commanding Camp.

Major JOHN A. HADDOCK,

Acting Assistant Provost Marshal General, Western Division New York.

A true copy:

C. MCKEEVER,

Brevet Brigadier General and A. A. General.

To the latter paper Mr. HOTCHKISS objected—first, because, in the report of Captain Ludington, already received, this paper is disposed of, and the charges contained in this report are refuted. Second, Dr. Davis, the surgeon at Camp Seward at the time referred to, has been summoned as a witness by General Fry and not examined by him, but has been examined before the committee, at the instance of Mr. Conkling, and affirmatively proves the falsity of this report, having stated, in his own language, that he never had examined a lot of men superior as soldiers to the very men referred to in this report.

The committee decided that the report might be received for the purpose of showing what amount of information or hint Mr. Conkling had that frauds were being committed at Utica.

WASHINGTON, D. C., June 7, 1864.

Hon. ROSCOE CONKLING sworn and examined on behalf of General Fry.

By General JEFFRIES:

Letter of Lieutenant Lott to Major Haddock (Exhibit No. 4) was here shown witness.

Question. Please state whether the paper, of which that purports to be a copy, came to your knowledge prior to the first of November last.

Answer. I am unable to say whether that paper or a copy of it came to my knowledge before November last. I shall be able, however, to say what perhaps will answer your purpose as well, if the question is put in another form.

Question. Was not this offered as evidence on the Haddock court-martial?

Answer. If it was offered in evidence upon the trial of Major Haddock, undoubtedly I saw it or knew of it; but whether it was so offered I am unable to state positively without referring to the record of the trial. I can state, however, that, prior to November last, it came to my knowledge that it had been charged by somebody—by Haddock or by some person—that unfit men had been sent from the 21st district to Camp Seward.

Cross-examined by Mr. HOTCHKISS:

Question. Were you at Utica at the time these recruits were sent from that place to Camp Seward—the recruits referred to in the above?

General JEFFRIES objected to any cross-examination of this witness on any other subject than the one inquired about, namely, as to Mr. Conkling's knowledge of the existence of the exhibit offered in evidence purporting to be a letter from Lieutenant Lott to Major Haddock, dated March 4, 1865.

The committee determined to permit the cross-examination to extend to the state of Mr. Conkling's knowledge of the matters sought to be shown to have

been brought to his knowledge by the reading of the said letter of Lott to Haddock.

Question. Please state what you know of Lieutenant Lott's report as to the men sent from Utica to Camp Seward, and about other matters at the camp.

Answer. At some some time, the precise time I am unable to state, it came to my knowledge that from some source allegations had been made that improper men had been sent from the 21st district to Camp Seward, and thereupon I made a somewhat careful investigation of the matter, of the situation of things at Camp Seward, of the desertions which had occurred there, of what had become of the money sent there, and of the character of men sent from the 21st district to that camp. I ascertained that that camp was not under the supervision of the ordinary authorities having charge of rendezvous camps, but of the Provost Marshal General's Bureau—John A. Haddock being the intermediate ranking officer; I ascertained, further, that a very large number of desertions had occurred at that camp of men who had brought their bounties there with them. I ascertained that, in addition to a sum which I shall have to refer to some papers to state accurately, (my recollection is that it was upwards of \$200,000,) which was obtained by the government after the arrest of Haddock, there was a further sum, (and for the precise amount I refer, among other things, to the review of the Haddock court-martial by the Judge Advocate General.) I state it now from recollection to be between two and three hundred thousand dollars, had been carried to that camp and had never been accounted for, and could not be found, and to this day has never been found, that I am aware of. I understand, further, that this Camp Seward was arranged in such a way as to enable men (if not to induce them) to desert, as well those from the 21st district as elsewhere, and that a large number of all the men from all quarters who came there did desert, the number and percentage in some instances being greater than that from the 21st district. Ascertaining these facts, I made further investigation into Camp Seward, and into the details, and especially into the details relating to the twenty-first district. I ascertained that the provost marshal of the twenty-first district had made repeated requisitions upon or through Major Haddock for uniforms, which had been disregarded, and that he had been unable to obtain uniforms; that he had been thus obliged to forward men to Camp Seward without uniforms; that as the men were unable to send any clothing back, they put on the most worthless and ragged clothes they had, and were sent there in that plight because the provost marshal was unable to get the uniforms to clothe them with. They would not wear good clothing there, for the reason that they might not be able to send it back. At Utica their relatives or friends would come and take their clothes back, but Camp Seward was seventy-eight miles from the enrolling office of the twenty-first district.

I ascertained, further, that the criticism which had reached me, (I do not now refer to this paper of Lieutenant Lott's, being unable to recollect that precise paper,) in reference to the looks of those men, was founded largely upon the fact that they did come thus ragged and tattered; and I ascertained that it was an unusual thing that Captain Crandall could not get uniforms in answer to these requisitions, and that therefore these men presented a marked contrast to the men who, as was usual, went forward in uniform, which served the purpose, also, of designating them so as to prevent desertion. I ascertained that this camp, in addition to being managed as I have stated, was so deficient in security that men were at liberty to desert; that no sufficient ward was kept over them; and thus, when men did not appear on duty, nor answer to the roll-call, their enlistment-papers were torn up and destroyed on the spot, and no full record, that I could ever ascertain, was kept. I ascertained, also, that the money was taken by one and another and kept in satchels and pockets, and that no full record of that could be found; I mean bounty money forwarded for men to this

camp. Besides these, I received other items of information, which I omit, as they may not be within the intention of the committee.

I ascertained to my satisfaction that there was a plan of suffering desertions from Camp Seward of men who brought bounties there; that there was a plan of appropriating those bounties, not to the men nor to the government, but to dispose of them in an illicit manner; and, as far as my knowledge goes, to this day, a large sum of these bounties has never been traced or found. I ascertained, as far as I could get at the fact, that the men sent forward from the 21st district were of the character which has been spoken of here by Dr. Davis, the surgeon who examined fifty-one; and that, while there was one instance to the contrary, (for I thought I satisfied myself that there was one man who, upon a careful examination, would have been rejected,) I could not ascertain that more than one man had been through the Utica office whose condition was such in respect to age and bodily vigor, that it gave rise to any serious question as to the character and integrity of the surgeon. With regard to that man, I pursued an inquiry, without being able to ascertain the precise means of accounting for his passing through the hands of the surgeon, except that, from all the investigation I was able to give it, I concluded that this man had gone through in the haste and pressure of examining a great many men, and that, if he had been recruited at a time when but few men were passing, and there was an opportunity to make a more rigid examination, he would have been, and, so far as I have been able to ascertain, he should have been rejected. Except that, I could never ascertain any fact which raises even a supposition as to the propriety and faithfulness of the conduct of the surgeon of the enrolling board, or of any other member of the board in the matter; but, on the contrary, I satisfied myself that the conduct of the board in reference to these men at Camp Seward was in no way the subject of blame. I ascertained this information, in part, by sending to Camp Seward a careful and experienced man to investigate there, and to gather up all the memoranda, records, and papers that he could find, and to see the officers who were left there. I ascertained it from the officer who succeeded Lieutenant Lott, and who came there, finding the condition at Camp Seward—I ascertained a part of it from him, and a part from papers which were furnished me. I could not at this moment name all the other sources, but I heard statements from various persons who were summoned as witnesses on that trial, some of whom were, and some of whom were not examined.

Question. Do you mean to say from your remark that you ascertained it from witnesses delivered under oath upon a trial?

Answer. I mean to include examinations under oath and otherwise. But my recollection is that the court-martial excluded under the specifications and charges various matters with regard to Camp Seward, upon the objection of the counsel of Major Haddock. My recollection is that two of his counsel argued very perseveringly against it, and that the evidence with regard to Camp Seward was, a large part of it at least, excluded, and I refer to the review of the Judge Advocate General as pointing out to some extent what I allude to.

Question. What were the names of the examining surgeon and of the provost marshal who are referred to as the creatures of ———?

Answer. On the 4th of March, 1865, Captain Crandall was provost marshal at Utica, Dr. Babcock was the surgeon, and Mr. Munroe was the commissioner. They are all named by Ludington in his report. Previously Lieutenant Colonel Poole had been provost marshal.

Question. Had these persons been removed from their positions before you entered upon the Haddock trial?

Answer. Yes, sir, before I was requested by the Secretary to act. I ought to add there that with regard to the men sent to Camp Seward, and the management of their local bounties, as well as with regard to the other men enlisted by Captain Crandall, and the board, I made as thorough an examination as I was.

able, by looking at papers and examining persons, and that the matter passed in review on the Haddock court-martial, as the record of that trial will show.

Question. In regard to this question of desertion at Camp Seward, how was the matter arranged there with regard to the barracks; what did you ascertain through the various official sources?

Answer. I prefer not to state anything of which my recollection is in the slightest degree indistinct. I prefer to state only those things which I recollect very distinctly, and the particulars now asked for I may not be able fully to recall; but I ascertained from the lack of guards which, according to my recollection, were stated to have been asked for and not sent, and from the way in which the barracks were arranged, the men were not prevented from deserting, and the state of things was such that I was unable to see how they could, with the materials there, have been prevented deserting if they had seen fit.

Question. Did you, on the 3d of April, after this question was brought to your notice of Ludington's complaining of the manner in which Crandall received men without having them pay the bounty as complained of by Ludington—did you ask the Provost Marshal General's opinion as to what was Captain Crandall's duty under such circumstances?

(Objected to as not coming within the rules as laid down by the committee; objection overruled.)

On Sunday, the 2d of April, at the War Department, I learned or had learned that Captain Crandall had been criticised for mustering in recruits who did not receive the full sum offered by the twenty-first district as the local bounty, and without five-eighths of that maximum sum being sent forward, and I called the attention of the Provost Marshal General to that criticism, and asked him, in the presence of Secretary Dana, (as Mr. Dana stated in his testimony,) what Captain Crandall should have done that he did not do, or should have omitted that he did do, in that behalf. He replied that he did not know. The question was repeated to him in this form substantially: Suppose, general, you had been in Captain Crandall's place, acting yourself, what else would you have done or omitted? His answer was that he did not know. The attention of the Secretary of War was also called to that criticism upon Crandall, and this statement of General Fry's was repeated to the Secretary; and the Secretary was asked whether, in his view, it would have been proper for Captain Crandall to reject fit men who offered themselves as soldiers, upon the ground that they did not receive the highest legal bounty paid, or upon the ground that in lieu of local bounty they had some arrangement of their own which they deemed more beneficial to themselves or their families. The Secretary replied that Crandall had nothing, in his view, to do with such a question as that.

Question. State what you ascertained with regard to the conduct of the supervisors, and whether you examined that?

Answer. My answer is that I have no knowledge of my own as to the action of the board of supervisors at the time; I have learned since that many citizens were consulted about it, but I was not—whether from absence from home or some other cause, I am not able now to state. I learned, however, when the matter did come to my knowledge, that two difficulties had presented themselves in the matter of raising men: first, that Major Haddock had required that local bounties should be paid in greenbacks, and that all the facilities for obtaining greenbacks, including the offer of a premium for them, had proved inadequate to raise the amount of these bounties in greenbacks. He required also, that five-eighths of the local bounty should be sent forward to Elmira. The bulk of that, as I understand, to be sent forward to the front, or some other disposition to be made of it, in place of its being paid to the recruit. I learned that men who thought of enlisting and were urged to enlist, and who, as the first step, wanted to make provisions for those they were to leave behind, objected to this arrangement.

For reasons assigned by those who thought of enlisting, and by their friends, objections were made to the bounty being sent forward to Elmira; and it was insisted that they ought to have whatever was raised for them by the local authorities to invest or to place for the benefit of those depending on them, so that they should know that provision was made before they left their home. This, for reasons they stated, was insisted upon as one of the inducements and safeguards in going into the army. In addition to that, Captain Crandall had had, from the commencement of the war, a great deal to do as a citizen with raising men. Crandall, from having been conspicuous as the friend of the soldiers and their families, and having been the depositary of their moneys, and having kept their accounts, was indicated, when he came to be provost marshal, by men who wanted to enlist, as the person into whose hands they would be willing their money should go, if he might be permitted to receive it, and hold it, and give to their families after they went to the front; but if it was to be sent from home they would object. Efforts were made at one time to have Major Haddock give Captain Crandall discretion over this subject, to allow him to be the custodian and to act upon his knowledge where he knew men, and to himself administer this matter of local bounty, which opportunity and permission Major Haddock withheld. The board of supervisors, as I understand, took this action, and fixed the local bounty at the sum, whatever it may be, that the recruit agreed to take and go for, the object of that being, as I understood it, to enable each recruit, as to local bounty, to make his own arrangement as to the amount that he was to receive; and if he went as a substitute for any person, to receive from that person such sum as he would give him for going as his substitute; and if he went as a recruit, to receive from the local committee or agent such sum as they paid him outside of the bounty; and the supervisors, as I understood it, were to dispose of this bounty-money, so that if a substitute went for Mr. Shellabarger, (if I may be allowed,) he paid this man for going whatever sum he agreed to. If it was \$1,200, he paid it. When credit was given to the county, he received from the county the amount of bounty that the county paid. If Mr. Shellabarger had paid more than that, he advanced from his pocket, in addition to that, whatever was necessary to get the man to go. Under this action the board of supervisors proceeded to raise men; and I have heard, before I heard it in this committee room, but when I cannot state, that some supervisors in disbursing this money had done, in fact, what this transaction would be if they induced a man to go by paying him, for example, \$100 bounty, and by receiving from some other person, his principal, \$500 more, making \$600 in all, to be disbursed by the county, if they charged the county the maximum sum, to wit, \$700, and the supervisor made the difference himself. I have heard such a statement as that never charged upon any man by name, but that some supervisors had been suspected of doing that. I inquired as to that subject only as a citizen of the district interested in its honor, and it is due to all the members of the board of supervisors to say that I have never been able to ascertain from the accounts or from any other source that that statement was true; and I have no reason now to believe, as a man of fairness exercising a just or Christian judgment, that any person connected with that board ever did that thing. If he did, I have never been able to ascertain it. But the board of supervisors did go on inducing committees and persons who were willing to put in substitutes or recruits to furnish them; and these recruits, in view of their unwillingness to make an engagement by which they were to receive what they did receive as a bounty from the county, and thus to subject it to this order, which would carry it into unknown hands at Elmira, agreed to take a sum as bounty less than the maximum sum, and they presented themselves for enlistment, declaring to the provost marshal the amounts of bounty which they received. The provost marshal, as I ascertained, (and I refer to what I believe is the chief source of my knowledge, the printed letter addressed to me by Captain Crandall,) did

explain to them on each occasion their full rights as to receiving bounty, and told them all the facts, and explained to them the truth in all respects; and many of them adhered to their determination to receive a smaller bounty than the highest sum paid by the county, having made their arrangement, such as I have suggested, by which they received from other sources something in lieu of it. And thus the question was presented to the provost marshal, whether a man who had passed the severest examination, and was in all respects qualified as a soldier and ready to enlist, was to be rejected simply because he did not take as large a local bounty as he might have received. I ascertained that Captain Crandall, suspecting this might be made use of by men who were not honestly inclined, or by agents putting in men whose purposes might turn out not to be honest, adopted this expedient of requiring an affidavit from the man if he did not personally know him, and also from another person proving his identity and place of residence and other particulars; and I understood he had adopted all the safe-guards he was able to in that respect; that he had reported to Major Haddock the first instance, being, according to my recollection, seventeen men, in which he mustered a man for less than the largest bounty, and that Major Haddock approved of that action. I ascertained also that Major Haddock wrote to Crandall that if men would go without any local bounty at all it would be right and would be preferable. I ascertained that Mr. Hunt, who is an eminent lawyer in the State of New York, and a man of very high personal and professional character, had acted, during the period of which I am speaking, as counsel for Captain Crandall, and that he and other leading citizens had advised Crandall that his duty was strictly and properly discharged by mustering in men under the circumstances which I have stated.

I ascertained, further, that an order came from Major Haddock directing Captain Crandall to allow the recruit to elect in what form of security—whether money, bonds, or otherwise—he would receive his bounty; that that order had been submitted to Mr. Hunt, with the question whether, if a man elected to take a county bond of six or seven hundred dollars as his bounty five-eighths of that bond was to be sent forward, and how that could be done. And I ascertained that Captain Crandall and others had construed that order, aside from anything else, as modifying the prior order that five-eighths must be sent forward, and this consequence followed in part from the fact that often recruits did elect to receive a county bond for their bounty, and to leave that bond as an investment drawing interest. I ascertained that the Secretary of War had sent, or caused to be sent, two officers—their grade and position I cannot state—to investigate affairs in the western portion of New York; that Captain Crandall had submitted this order to them to get their construction, and had received the advice and opinion from them that it obviated the sending forward the five-eighths bounty. Having heard what had been done, and having gained all the information about it that I could, I was left without the shadow of a doubt that Captain Crandall had been scrupulously honest in all his acts. And I state now, as a witness, that I believe him to be as thoroughly upright and honest a man as can be found, and in all my investigations upon this matter I have never had a doubt upon that point.

By the CHAIRMAN:

Question. What was the result of your investigations as to the practice of this Surgeon Babcock?

Answer. I have spoken of one man who went to Camp Seward, in whose case I came to the conclusion that the examination must have been less thorough than an examination should have been, and whether the passage of that man was to be accounted for, as Major Ludington has suggested, from haste and overwork, or otherwise, I am at a loss to state; but I state as to everything else that I was never able to ascertain that Dr. Babcock had been guilty of any offi-

cial dereliction or irregularity that was blamable. I never learned of the surgeon or of the commissioner that they had done anything for which they should be or could be prosecuted. I learned, as I omitted to state, that in addition to other securities and safeguards required by Captain Crandall, he, of his own prudence and invention, with the advice of his counsel, I presume, required, in the case of men put in by agents for recruiting, as they were called, or by recruit contractors, a deposit in his hands, either of money or the equivalent of money, as security against desertion—such a sum as, together with the bounty which was paid, amounted to the whole sum which, upon any construction, should have been received as bounty. Aside from the bounty, he required from the person putting in recruits to “put up” such a sum in money, or the equivalent of money, as a security against desertion, as, together with the bounty, would amount to the largest sum which, upon any theory, he had a right to exact.

Re-examination.

By General JEFFRIES :

Question. May I ask you whether you visited Camp Seward in making these investigations?

Answer. I did not. Camp Seward was broken up before my inquiries there commenced.

Question. Tell the committee who the person was that you sent there who reported to you the facts as you have stated as to the information you received.

Answer. Schuyler Hubbard.

Question. What other means of information did you have except the report he made to you as to the facts you have stated in relation to that camp?

Answer. A very large quantity of papers.

Question. Describe what those papers were, and in whose possession you found them.

Answer. They were lists of names, receipts for moneys, certificates of officers, statements of clerks, books, (in the sense of smaller books; I don't mean large ledgers,) entry books, the verbal statements of numerous persons, privates and officers.

Question. Was there any portion of this information furnished under oath—those books and papers?

Answer. I would not be willing to state, without referring to the papers, whether any of them were in the form of affidavits or not.

Question. When did you send Mr. Hubbard to Camp Seward to make this investigation?

Answer. I am unable to give the precise date. It was during my investigation and the preparation of the case of Major Haddock.

Question. Was it before or after April 3, 1865?

Answer. It was after.

Question. How did you ascertain that Major Haddock had refused to furnish uniforms?

Answer. I don't think I said refused; I learned that Captain Crandall had made these requisitions in vain.

Question. Does it occur to you now that it was the business of Captain Crandall to apply directly to the quartermaster's department for clothing, and that Major Haddock had nothing to do with that branch of the duty? That the provost marshal of the district settled with the Quartermaster General, with whom his account was exclusively kept?

Answer. My understanding is that Captain Crandall applied for soldiers' clothing through Major Haddock. Whether that was the precise routine of the business I have no knowledge.

Question. From whom did you obtain that information?

Answer. From several different sources—from Captain Crandall, from his

assistants, and from other officers, I think, and probably from having been shown at some time letters or requisitions.

Question. From whom did you obtain the information touching the loss of \$200,000, to which you have referred in your testimony?

Answer. I obtained it from papers, memoranda, receipts, and statements made by persons as to the amount of money recovered from Major Haddock, the number of men who went to Camp Seward, carrying bounty, and from other particulars of information furnished by the papers referred to, and from Lieutenant Lott, from Captain Ripley, from Mr. Hubbard, and other persons.

Question. Do you know now that the report of this or any other large sum of money lost at Camp Seward was without foundation?

Answer. I do not, nor do I so believe.

Question. Have you any knowledge of the subject other than the papers to which you have alluded as to the fact of any loss at that camp?

Answer. I have no knowledge except that derived from the various different sources referred to, although I have not enumerated particularly all those sources.

Question. From whom did you receive the information that no record was kept at Camp Seward?

Answer. I received information that no reliable record of desertion at Camp Seward was kept from Mr. Hubbard, who investigated, from the statement made by Lieutenant Lott, and from different persons, and from my inability to discover any reliable data upon that subject.

Question. Do you know or did you ascertain in that investigation that the destruction of the enlistment papers at the rendezvous would in no way aid the commander of that camp, or any other person desiring to aid desertion, to avoid detection?

Answer. I did not ascertain anything on that point that I remember; nor do I now know how far the destruction of the enlistment papers might aid desertion.

Question. Do you know that enlistment papers are made out in triplicate or in quadruplicate, one copy sent to the rendezvous, one to the Adjutant General at Washington, and one retained by the provost marshal?

Answer. My understanding is that enlistment papers were made in duplicate, or more than duplicate form, but where the different copies are sent I do not know.

Question. Do you know the fact that the commander of the rendezvous in all cases is required to sign duplicate receipts for all recruits delivered to him?

Answer. I have no knowledge on that subject.

Question. Do you know in what denomination the county bonds of Oneida county were issued, in order to provide bounty under the last call of the President for troops?

Answer. I do not.

Question. You have stated that you made a careful examination of the board of enrolment at Utica. Please state when that was.

Answer. It was from time to time as subjects of inquiry presented themselves.

Question. Did you ever make any examination after April 3, 1865?

Answer. After that time I inspected orders, papers, letters, and other matters to which I had occasion to resort, to ascertain the facts incident to preparing the case of Major Haddock.

Question. Did you ever make any investigation of that subject prior to April 3, 1865?

Answer. No investigation, technically speaking; but through Mr. Hunt, Mr. Roberts, and Captain Crandall himself, and other persons, I had received much information with regard to those difficulties and transactions.

Question. Did you at any time believe any of the reports that came to your

ears to the discredit of Captain Crandall, or any other officer of that board during Captain Crandall's time?

Answer. I did not believe them; and further, I did not ascertain them to be true or probable.

Question. Disbelieving all these rumors or papers, did you deem it incumbent upon you to make any investigations as to their truthfulness?

Answer. The expression of "all these rumors and papers" does not apply to anything that reached my ears; and, under the request and instruction of the Secretary of War to prosecute for the United States, it was no part of my duty to prosecute Crandall or his associates on the board; but, as a citizen of the district, I did, from time to time, take pains to satisfy myself whether Captain Crandall had committed any impropriety or not.

Question. Did you happen to know that Captain Crandall had disobeyed the orders of his superior officers during the time he was provost marshal?

Answer. I did not know it or believe it; nor do I now believe it in any sense implied by the question.

Question. Did it come to your notice, at any time prior to November last, that Captain Crandall had mustered men by sending forward with them but \$50 as local bounty?

Answer. Yes, sir.

Question. Did it come to your knowledge, at any time prior to November last, that Captain Crandall, between the 15th of January, 1865, and the 1st of March, mustered into service and forwarded to the rendezvous recruits with less than five-eighths of the local bounty which was being paid by the county of Oneida to recruits?

Answer. If by the "bounty being paid" is meant the highest limit up to which bounties were authorized or paid, I have heard that men were mustered in without five-eighths of that highest local bounty being sent forward with them.

Question. Did it come to your notice, prior to November 1, that Captain Crandall refused to turn over to Special Agent or Special Officer Howard certain moneys and bonds which his superior officers had directed him to do?

Answer. Mr. Hunt informed me that he had advised Captain Crandall not to turn over certain bonds to a young man by the name of Hoard until he could ask for and receive advice and instructions from the War Department.

Question. Did it come to your knowledge, prior to November last, that Captain Crandall refused to turn over certain moneys and bonds to Captain Meredith, United States disbursing officer, as ordered by his then superior officer?

Answer. It came to my knowledge that a man by the name of Meredith appeared in Utica under somewhat singular circumstances, and that Mr. Hunt, as the counsel of Captain Crandall, advised him that it would be unsafe and improper for him to hand over certain bonds to this person until he had made representations and had received instructions.

Question. Did it come to your notice, prior to November 1, that Captain Crandall, when he was suspended from duty, was ordered to turn over to his successor, Major Beadle, certain moneys and bonds, that he refused to obey the order of his superior officer directing him to do that, and did it ever come to your notice that, after he was out or suspended from office, he retained the money and bonds, and refused to turn them over to his successor, Mr. Beadle, who so performed the duties of the office?

Answer. No information of that kind has ever reached me except as I will proceed to explain: I was informed that Mr. Hunt, the counsel of Captain Crandall, had written minutely, through Major Haddock to General Fry, and directly to Fry, giving a statement in detail of the bonds referred to in the two preceding questions, and of the circumstances connected with them, and asking direction from General Fry as to the disposition to be made of them, and all claims about

them asserted by other persons. I was informed that General Fry made no answer to these letters, except in the form of an order dated on the 30th of March, which order omitted to direct with regard to the bonds, although it directed with regard to the other things as to which direction had been asked; and I was informed that Captain Crandall actually complied with the order and the whole of it, as it was understood by him and by his counsel, and as I myself now understand its effect.

Question. Do you know how long it was before the date of that order that Captain Crandall refused to turn over these moneys and bonds to Special Agent Hoard, or to Disbursing Officer Meredith?

Answer. I do not know that he ever refused, in the sense of the question. I have stated all I do know on that subject, and the dates of the occurrences, without reference to the papers, I could not at this moment give. I was informed that his counsel advised him that his duty and his security required him to make representations of the facts concerning those bonds to the War Department, and to get instructions before he would be warranted in turning them over, and involving either the government or himself in litigation.

Question. Do you know that Captain Crandall refused, on or about the 10th of March, 1865, to turn over to Special Agent or Officer Hoard money which he had received as provost marshal of the twenty-first district, and which he was ordered to turn over to Hoard by Major Haddock?

Answer. I do not—supposing the term “money” to be used in its strict sense.

Question. Did it come to your notice by means of official letters passing between Captain Crandall and Major Haddock, and some of which were produced on the Haddock court-martial, that Captain Crandall had refused to turn over money as well as bonds, on the order of Major Haddock, to Special Officer Hoard?

Answer. It never, to my recollection, came to my notice that Crandall refused to turn over any moneys which he held as provost marshal, or had a right as provost marshal to turn over to Special Agent Hoard.

Question. Has a letter from Captain Crandall to Major Haddock, in which Crandall states his reasons for refusing to turn over money to Officer Hoard or Meredith, in compliance with Major Haddock's order, come to your observation at any time?

Answer. Upon seeing the letter, if it exists, I may remember it. I do not now know to what letter reference is made.

Question. Did it come to your notice that Captain Crandall had reported the fact that there were in his hands at a certain time, during his term of office, \$33,995 10, and that upon being ordered to turn over to the government that amount, he only turned over \$8,095?

Answer. It came to my knowledge that Captain Crandall reported to the government in detail, by items, all moneys and securities, as I supposed, remaining in his hands, the precise amount I cannot without reference to the account state; and it further came to my knowledge that Captain Crandall turned over either to the special agents sent, or to the disbursing officer, or to his successor, Major Beadle, or paid out properly under the supervision of some one of those officers, all moneys or securities in his hands, excepting a certain amount, believed to be \$20,000 of bonds, which were the subject of the litigation testified to by Judge Hunt.

Question. Do you know the fact that Captain Crandall turned over these bonds to the supervisors of Oneida county?

Answer. I do not know the fact. I only understand the ultimate disposition made of them in particular, from the testimony delivered to this committee by Judge Hunt.

Question. Do you know the fact that in a case pending in the supreme court of Oneida county, in which a man by the name of Richardson is plaintiff, and

Crandall the defendant; do you not know that said Crandall testified that the bonds in question belonged to the United States?

Answer. I do not.

Question. Have you ever seen the record in that case?

Answer. I have not.

Question. Do you know the fact, or have you ascertained in such manner as satisfies you of the fact, the same as you are satisfied of the other facts, that you say here you have ascertained, that Captain Crandall has ever turned those bonds over to the board of supervisors of the county?

Answer. The information I have on that subject was given by Judge Hunt in his testimony. That is all I know about it.

Question. Do you know that in the litigation of that suit to which I have referred that Captain Crandall set up as a defence to the action that these bonds were the property of the United States?

Answer. I understood that Captain Crandall claimed himself no interest in those bonds, no beneficial ownership; that he claimed that he was the custodian or trustee, and that it was for the court to say who was the *cestui que trust* for whom he held them.

Question. Did you at any time advise Captain Crandall not to turn over those bonds?

Answer. Never. I never had anything to do with advising him one way or another. Mr. Hunt was his counsel. I never acted as his counsel in any sense of the term, and therefore never had occasion to give advice about it.

Question. Did it ever come to your notice, during the time you were investigating frauds in the western district of New York, that about one-half or more of all the men recruited in the county of Oneida deserted—more than one-half of the men put in by Crandall?

Answer. It came to my notice some time that Major Haddock had put such a statement on record, but the truth of that statement never came to my knowledge, but the reverse came to my knowledge.

Question. Do you know about what number of men deserted who were put in service by Captain Crandall before reaching their regiments or the organizations to which they would have been assigned?

Answer. My information and belief is, that only forty-one men of all those enlisted by Captain Crandall ever deserted while they were within his district, or on their way to the rendezvous, or before reaching their rendezvous; and of these only twenty-two or thereabout deserted from Captain Crandall's official custody. I understand that eight or ten of these men were purposely let out by a man by the name of Sabine, whom Haddock sent from Elmira. A letter that I have seen directed that Sabine should be put in charge of the barracks, taking pay for doing so, although on his examination, on the Haddock trial, he declined answering on the ground that he would criminate himself. I understand that seven more of the men who escaped, although they were marked as deserters, and did desert in a tumult at Albany, were retaken by the instrumentality mainly of a man by the name of Buckhart, a special agent of Crandall's.

Question. Did it come to your notice that this man Sabine had an interview with Richardson at a hotel in Utica, at which it was said he received the money to which you have referred?

Answer. No, sir; I was told by Richardson, and offered to prove on the Haddock trial, according to my recollection, and I believe it was excluded, that this man Sabine did appear at the room of Richardson on this night with two recruits; that he proposed to Richardson, upon receiving money, to allow them to go, (or made some such offer as that—the record will show, I think—I may not get it correctly,) and that Richardson refused to give them money.

Question. Did it come to your notice that the two recruits to which you have

alluded in your answer did receive money on that occasion from Aaron Richardson, in the presence of Sabine, and did Sabine refuse to state the purpose for which money was received by those men?

Answer. That is not in my recollection.

Question. Do you happen to know whether that fraudulent transaction to which you have alluded has ever been prosecuted by anybody?

Answer. I am informed that Captain Crandall, upon learning the act of this man Sabine, caused him to be arrested and sent back to Elmira, with a statement to Major Haddock of what he had done. I am informed that he went or was taken into Major Haddock's presence; that the facts were then laid before him, and that he directed this man to rejoin his regiment in the Veteran Reserve Corps, and that he never did cause him to be punished or reprimanded. A part of those facts appeared on the trial of Major Haddock, and upon their having appeared I brought them to the notice of the court, the military gentlemen composing the court, and especially of Major General Robinson, its president, and asked him whether he could point out to me anything that I could do or ought to do to bring this man's case to the further attention of anybody. And it being sufficiently a matter of record in the proceedings of the court, he stated to me that he did not know that anything further would be useful or incumbent. This man was a sergeant. Whether at the time this trial took place he had left the service I do not know, but he was summoned as a witness by Major Haddock, and these facts came out in his cross-examination.

Question. Please state to the committee whether you had any knowledge or information as to this fraud of Sabine's prior to the trial of Major Haddock.

Answer. My first information of this act of Sabine's was derived from a letter addressed by Captain Crandall to me, which, for the convenience of General Fry and the War Department, I caused to be put in print and transmitted to General Fry. And the next information I remember receiving in regard to it was from Mr. Hunt, who stated to me that he had written a letter to the War Department, in which he had given these facts, which letter has been offered in evidence before the committee; and both of these statements made to the War Department and to General Fry were prior to the 30th of March, 1865.

Question. What was the date of that letter?

Answer. I do not recollect the exact date. I only recollect that it came into my possession, and I suggested it be put in print and enclosed to General Fry.

Question. Do you know of any prosecution ever having been made against this man Sabine for this offence?

Answer. I have stated all I know.

Question. Look at this paper and see whether the original or paper of which this is a copy ever came to your notice.

The telegram was read and is as follows:

ELMIRA, N. Y., February 17, 1865.

Captain CRANDALL:

You seem to be filling the quota of Oneida county with bounty-jumpers and thieves. Stop such enlistments immediately.

JOHN A. HADDOCK,

Major and Acting Assistant Provost Marshal Western District, N. Y.

Answer. I have.

Question. When did you first see it?

Answer. The first I ever heard of it was from the letter addressed by Captain Crandall to me, which was immediately forwarded to General Fry. In that letter it was set out and explained.

Question. I hand you this paper, which is a letter from Major Haddock to Captain Crandall, dated Elmira, January 28, 1865, headquarters acting assistant provost marshal general's office, and superintendent of the recruiting service,

marked "W. W. 10" and relates to seventeen men who were forwarded by Crandall without having five-eighths of the bounty. It is from Major Haddock. Has that ever been brought to your notice?

Answer. I cannot say.

Question. Did the reply to this last letter from Crandall come to your notice, dated Utica, February 3, 1865?

Answer. I can only say, generally, that Captain Crandall having reported the circumstances of these seventeen men was brought to my notice, and that it was approved in some form by Major Haddock.

Question. In regard to the operations to which you have referred in your testimony, did you not concur with those who opposed that five-eighths order?

Answer. I can only say that it was reported to me that these objections were raised at a time when the residents of the district were considering the question of enlisting, and that it was reported that in the case the best men to be obtained—men whose families resided in the district, and who could be relied upon as soldiers—were deprived of their local bounties, and the denial of their right to make provision for their families before leaving their homes, constituted an objection and obstacle to their enlisting; and as far as that was true, I did think, and do think, that the order was unwise.

Question. Did you recommend to the War Department that the order in question be revoked?

Answer. I represented to the War Department the fact, and the effects in brief as they were stated to me, at the request of various persons who were aiding the government in raising men.

Question. For what purpose do you state, in answer to a question just asked, that the men residing in Oneida county made better soldiers than others?

Answer. I mean that Captain Crandall and others thought that if he was vested with discretion to retain the local bounty as security in the case of men whom he did not know, and whose faithfulness might be secured in that way better, if he had the authority in the case of residents whom he knew and could rely upon to allow their families to receive the bounty at once, it would have been a wiser and more judicious arrangement than an inflexible rule such as Major Haddock issued and for a time enforced. I mean to say that if men who had families in the district and resided there, and whose uprightness was personally known to the provost marshal, greater security would have been afforded as to their serving faithfully as soldiers than could have been afforded in case of men whom he did not know personally, and who had not families and a well known character in the neighborhood.

Question. Have you stated in the House of Representatives or elsewhere that on the trial of Major John A. Haddock you acted as counsel to the United States?

Answer. I have, whether in those words or not; but that I acted in prosecuting Major Haddock. Whether I used the word "counsel" I cannot now undertake to say.

Question. State whether on that trial there were other counsel or lawyers employed to conduct any portion of the trial?

Answer. Yes, sir; Major Haddock had three counsel. One of them was not there except during the earlier stages of the trial.

Question. State whether, when the court was cleared for deliberation, the counsel to whom you have alluded remained present with the court or were excluded?

Answer. I do not remember that the counsel for the accused were ever present when the court was cleared.

Question. Do you know as a fact that they were all excluded when the court was cleared for deliberation?

Answer. It should have been so, and I have no doubt it was so.

Question. State whether during the deliberations with closed doors, to which you have referred, you remained in the court-room and partook of the deliberations.

Answer. At times when the court was cleared I remained in the court-room, and this was probably usually so; but as to the deliberations of the court, if I understand the force of the term, I took no part. I remember that once, and perhaps more, my opinion was asked by the court upon some question of law, and I gave it; but I had nothing to do with voting or with the decisions of the court, and of course did not vote or decide myself.

Question. State whether any of the counsel to whom you have referred administered any oaths to witnesses on the trial.

Answer. The counsel for the accused did not administer oaths to witnesses.

Question. State whether you administered oaths to witnesses.

Answer. I did. The counsel for the defendant cross-examined the witnesses for the defence. They also made their own objections, and argued all questions of evidence and of law to the same extent they would have done in a civil court.

By Mr. HOTCHKISS :

Question. In relation to this despatch from Major Haddock to Captain Crandall with reference to enlisting bounty-jumpers and thieves, state what came to your knowledge in relation to that, and what you know about it.

Answer. It was represented to me by Captain Crandall, and I became satisfied of it subsequently, that a despatch was sent by Haddock in order to bring this bounty broker, Richardson, to terms; to interrupt all relations between him (Haddock) and Richardson, so far as to let him know that he was saying to Captain Crandall that improper men were being enlisted, and with the view of bringing Richardson and Richardson's agent to Elmira to appease Major Haddock. It turned out that the effect of the despatch was to cause the sending by Aaron Richardson of his agent to Haddock, and to cause him to go and see Haddock himself, at one of which visits \$2,000 was paid to Haddock, as the court-martial found, as a bribe. In short, the object of the despatch was, I believe, to enable Haddock to induce Richardson to divide more promptly and more largely. The despatch, and the circumstances about it, will appear in the printed letter of Crandall, which has been given in evidence by General Fry, and also in the record of the Haddock court-martial.

Question. State what service you were requested by the Secretary of War to perform; what instructions he gave you in relation to prosecutions, and whether they extended to any one except Major Haddock and those connected with him whose conduct it was necessary to investigate in order to successfully prosecute him.

(Objected to, on the ground that the appointment was a written one, setting forth specifically Mr. Conkling's duties, and was itself the best evidence on that subject.)

The CHAIRMAN. The committee hold that as the matter referred to them involves an inquiry into the good faith and diligence of Mr. Conkling in prosecuting frauds in the recruiting service in New York, they will admit full proof of all the directions of and arrangements with the military authorities who had the power to give him instructions in that matter with which he was charged; and this, whether these directions were in writing or verbal, and whether they agree with the formal written authority of the date of April 3, 1865, or not.

Answer. The request made of me by Mr. Stanton was as stated by himself and by Mr. Dana, in general terms. It was stated between Mr. Stanton and myself that there were certain persons supposed to be in collusion with Major Haddock; one of them was Richardson, the bounty broker; one of them was a civilian by the name of Smith; and there were suspicions of others whom I

omit to name. It was the subject of conversation between Mr. Stanton and myself whether any civilian could be tried before a military commission, or in any way dealt with by the military authorities. That question was also the subject of conversation between the Judge Advocate General and myself. The request of the Secretary was that I should prosecute Major Haddock and those in collusion with him as far as their prosecution should be necessary to the end that he had in view, namely, to break up the recruiting and other frauds in the administration of Major Haddock, or in the provost marshal's bureau of the western division of New York. As he stated it was his design and authority that Richardson should be used as a witness if he would make disclosures, the matter of Smith and other civilians who might turn out to be connected with Haddock was left to my discretion. The instructions given by the Secretary to Mr. Dana were that I should have the broadest and amplest authority to execute this service if I concluded to comply with his request; and neither the Secretary of War nor Mr. Dana, nor the Judge Advocate General, ever made of me any request, or gave to me any direction, that I was to investigate or prosecute beyond the scope of Major Haddock and his confederates. The Secretary well knew—he was informed by me, that I deemed Captain Crandall entirely blameless, and believed that he had been very vigilant in discharging his duties and detecting frauds, and therefore it was not his direction that I should prosecute him, but no such intention or possibility entered into his request.

Question. Did you perform fully all that you understood to be required of you?

(Objected to, and objection overruled.)

Answer. I performed most scrupulously and conscientiously every duty that I supposed devolved upon me, and I did it at the expense of business and profit to myself, which made it a very disagreeable duty to perform.

Question. State whether General Fry gave you any information in relation to the matter of Richardson.

Answer. At or just after the time of Richardson's removal from office, when the citizens of the district were seeking to learn the cause of his removal, and whether there were any charges against him, General Fry wrote to me that there were charges against Richardson, and that those charges had been put into the hands of the United States district attorney for the northern district of New York—Mr. William A. Dart, of Pottsdam, some 200 miles or upward from Utica.

JUNE 8.

Hon. ROSCOE CONKLING appeared, and his cross-examination was resumed.

By Mr. HOTCHKISS:

Question. What further did you learn in relation to what became of those charges?

Answer. I learned they had been put into the hands of Mr. Dart in consequence of Richardson being discharged or dismissed the service, and that the Judge Advocate General deemed the case a proper one for the civil tribunals; and subsequently I understood that they had been by Mr. Dart transferred to the district attorney of Oneida county upon his own opinion that if Richardson had committed any offences for which he could be prosecuted, they were offences against the State law and he must be prosecuted in the State courts; and I heard that the district attorney of Oneida county, Jenkins, presented the case to the grand jury, who investigated the charges and found no bill against Captain Richardson, and I heard that they were unanimous that there was no cause of indictment against him; I never had any request or direction, or authority of any sort, to prosecute Captain Joseph P. Richardson, or to deal with him in any way.

Question. Did you ever feel it incumbent upon you, in any way, or have any promptings, that it was a matter of duty that you should interfere with the matter of Richardson?

Answer. Certainly not. I never thought of it and never heard it suggested until I heard it suggested here that I had been charged with any responsibility in the matter of Richardson.

Question. I want you to state if it was ever brought to your knowledge during this operation what Haddock's purpose was in getting these bonds out of the hands of Captain Crandall that Richardson claimed, and for which the suit was afterwards brought, if you know that he had any particular purpose in the matter.

(Question objected to; objection overruled.)

Answer. The bonds referred to were required by Captain Crandall, as I understood it, not in pursuance of any order, but as a safeguard of his own from a person by the name of Aaron Richardson putting in men, and as a security against desertions. As there was no law or order requiring such collateral security, it was insisted that the requirement by him of these bonds was an excess of authority. This was the claim of the bounty broker (Richardson) by whom they had been put up and against whom Crandall held them. Captain Crandall and his counsel, on the other hand, maintained that although an act of his own, arising from abundant caution on his part, and without any express order, yet, as against the broker, if the men had deserted, he, Crandall, could justify holding the bonds on behalf of the United States, or on behalf of the county of Oneida, (they being the bonds of that county.) That was the question and these the terms on which the bonds were held. As appears to a considerable extent by the record of the Haddock court-martial, and by other papers, much illicit negotiation took place between Major Haddock and the bounty broker Richardson, the purpose of which was to get these bonds out of Crandall's hands for the benefit of the broker with whom Major Haddock was alleged to be and was proved to be in collusion.

Question. At what time did this information come to you?

Answer. A large part of it had come to me about the time Captain Crandall was suspended, and enough of it to satisfy me of the guilt of Haddock, if not of others.

Question. Did you receive information at this time sufficient to satisfy you whether it was or was not proper for Crandall to give these bonds to Richardson or to Haddock?

Answer. I did.

Question. From that information, what was your conviction as to that point?

Answer. My conviction was, that Captain Crandall, as an honest, prudent man, and his counsel, as an honest, prudent lawyer, were right in insisting that the government should be apprised of the situation of the bonds before any action was taken.

(The last question and answer are objected to by General Fry on the ground that it is not competent to offer the opinion or conviction of Mr. Conkling as to the propriety or right of Captain Crandall to disobey the order of his superior military commander, Major Haddock, which directed him to turn over the money and bonds in question.)

Objection overruled, and answer admitted as throwing light upon the good faith of Mr. Conkling in omitting prosecution.)

Question. In connexion with this matter—your duty to prosecute Crandall—I find in this letter of Major General Fry's these words: "Whether he received, as it has been reported, from his district five thousand dollars for the same service, and whether he received additional fees from guilty parties for opposing proceedings at Utica, I am unable now to say; but, as hereinafter

shown, he was as zealous in preventing," &c. I want to know what you have to say in relation to that insinuation.

Answer. I say it is utterly false, and that I never heard such an intimation until the letter of General Fry was read at the Clerk's desk. I can simply state that I never received one farthing from my district, or from any source whatever except the United States, for the service alluded to in this statement of Fry's; nor did I ever receive a farthing, or a consideration of any sort, such as he intimates. I have already said that I never heard such an intimation until I heard it at the Clerk's desk.

By General JEFFRIES :

Question. In answer to a question of Mr. Hotchkiss, in relation to the purpose of Major Haddock's getting into his possession the bonds referred to, I desire you to state whether or not, after I had objected to the question, you stated to the chairman that "if permitted to answer that question" your "answer would be that it appeared from the charges and specifications of the Haddock case that Major Haddock had been bribed to secure these bonds from Captain Crandall for Aaron Richardson, the bounty broker," or substantially this.

Answer. I did not.

Question. What was your language, and the remark you replied to?

Answer. As nearly as I can remember, it was that the record of the Haddock court-martial showed that Major Haddock and Richardson were in illicit or guilty collusion in reference to those bonds, and that they were the subject of bribery between them. This may not be the precise language, but is as nearly as I can state it.

Question. On the subject to which you have testified, touching your understanding of the authority which you held directing you to make investigations of frauds and misdemeanors of the western division of New York, if you had discovered fraud, misdemeanor, or inefficiency on the part of the head of the bureau of the Provost Marshal General, would it have been your duty, as you understand it, to have reported such fact to the War Department or elsewhere, or to take any other action; and if so, what?

Answer. Regardless of my authority to prosecute for the government, I should have deemed it my duty to report to it any evidence establishing the corruption of one of its officers, if I had supposed that evidence would reach the government first through me.

Question. Did you ever at any time report to the Secretary of War any fraud, corruption, malfeasance, or neglect of duty on the part of Provost Marshal General Fry?

Answer. I informed the Secretary of War that facts, transactions and coincidences had come to my knowledge which rendered it impossible to resist the impression that there was something wrong at the head of the provost marshal's bureau.

Question. Did you state to the chairman of this committee and three other members, or in their presence, that you made no charges, nor did you expect to be able to prove that General Fry was guilty of fraud, corruption or mismanagement, or that anything could be alleged against the head of the bureau of the Provost Marshal General? and, for the purpose of refreshing your memory as to the time, I call your attention to the first meeting of the committee, in which all the members were present.

Answer. I did not.

Question. Did you state substantially as I have included in my inquiry?

Answer. My answer is that I stated on that subject only as I will now relate: The chairman of the committee, according to my recollection, stated that before proceeding with the investigation the committee wished to know what the course and scope of the inquiry was to be—whether the inquiry as to Gen-

eral Fry was to relate to what had been done in his office in Washington, or whether it would embrace occurrences in the bureau, and if so, in how many different States. In answer to this and other remarks of the chairman, I stated that my understanding was not that General Fry, individually or personally, (I cannot state which word I used,) simply was to be investigated as to his conduct; but that the doings in the bureau, of which he had charge and for which he was responsible, were, as I supposed, to be investigated; that I did not propose to the prosecutor of General Fry, that I thought investigations of military officers heretofore by congressional committees had been somewhat severe in manner, and that I hoped General Fry would be allowed to be present with counsel to cross-examine witnesses and to see in all respects that no injustice was done him. I did not state that I did not expect the proof that would be given to sustain the charges which the committee was raised to investigate.

Question. Did you state to the committee on the occasion referred to that you did not expect to hold accountable the head of the bureau for the frauds of the western division of New York, or substantially that statement?

Answer. I did not, anything to that effect.

Question. Did you state on that occasion it was not a personal matter with General Fry himself, but that it was an investigation of the frauds perpetrated in his bureau?

Answer. I stated that it was not wholly an individual matter with General Fry, that is, that the investigation ought not, in my judgment, to be confined to the personal individual acts of General Fry, but that it should extend to what was done in the bureau by the persons for whom he was responsible.

Question. Did you say on that occasion that you did not expect to charge these frauds to the head of the bureau or to the office in Washington; if not, what did you say in regard to the head of the bureau and the office in Washington?

Answer. I did not say that I thought these frauds did not go to the responsibility of the head of the bureau or of the office at Washington. I did say that I thought the range and scope of the investigation ought not to be confined personally to the head of the bureau or to acts done in his office at Washington.

Question. What did you report to the Secretary of War against General Fry, and when was it?

Answer. I have had several conversations with the Secretary of War, in which I have mentioned to him my suppositions and the circumstances which had come to my knowledge. The precise time of these conversations I should not be able, without reflection, to state.

Question. What did you say to the Secretary of War in the conversation alluded to?

(Objected to by Mr. HOTCHKISS, on the ground that the evidence is incompetent and irrelevant. Objection overruled.)

Question repeated as follows:

Question. What did you say to the Secretary of War when you reported to him your suspicions of General Fry, and that there was something wrong at the head of the bureau? You will please notice that in this question I do not call on you for anything said by the Secretary of War.

Answer. The question supposes what is not true, and therefore I cannot answer it directly. I had no conversation with Mr. Stanton after April, 1865, until after the prosecution of Major Haddock and my action in that regard was ended; and these conversations in which General Fry's name was mentioned were private and casual conversations since my action in prosecuting for the government terminated.

Question. Was the occasion to which you have alluded, on which you communicated to the Secretary of War your suspicions as to General Fry, previous to or after the 3d of April, 1865?

Answer. That question, I think, is thoroughly answered heretofore.

Question. I understood you to state, in reply to a question of Mr. Hotchkiss, that you never saw the papers in the Richardson case. Please state if that was your testimony.

Answer. I am not aware that any such question has been asked or answered.

Question. State whether you have applied to the district attorney, if that is his title, to a gentleman named Jenkins, at Utica, for the papers in that case, and whether you applied on the part of Captain Richardson for those papers?

Answer. I did not.

Question. State whether in these papers there is a memorandum in pencil in your handwriting.

Answer. I cannot say whether there is on any of these papers a memorandum in my handwriting or not, as I will explain when I have an opportunity. I have a recollection that at some time Mr. Jenkins exhibited to me some paper or papers which had come to him from the United States district attorney, and informed me that he was investigating the case, and my recollection is that I took these papers in my hand and looked at them, to what extent I cannot state. I may have read some part of them. I have a recollection of a letter from the Judge Advocate General. Whether I made any mark on any of them it is impossible for me to remember.

Question. Do you desire to modify or change your answer to the question of Mr. Hotchkiss, which elicited your remark touching your having seen or not having seen the papers in the case of Richardson?

Answer. I don't know to what answer or question reference is made.

Question. Were you authorized to appear as counsel on behalf of the United States in the civil courts in the western division of New York, in any case that you saw fit to investigate or to cause to be investigated, in the civil courts in the western division of the State of New York?

Answer. I was authorized to prosecute Major Haddock, and any persons in collusion with him or connected with his acts whom I deemed it essential to prosecute, and to do so in the courts of the United States which should be deemed fittest. I had no authority except this and the written paper in evidence as far as that constitutes authority.

Question. If I understood you correctly, you have stated that you had no conversation with the Secretary of War after the third day of April, 1865, for several months. If that is true, please so state, and whether you have received the paper to which you have just alluded, and which purports to authorize you to make investigations in the western division of New York on that day.

Answer. I answer that I have not stated that I had no conversation with Mr. Stanton after the third day of April, 1865; I did have conversation with him on a subsequent day, early in April, 1865, but after the third. My recollection is that I reached Washington, in answer to a summons of the Secretary of War, on the 2d of April; that I remained in Washington the 2d and 3d of April; that I went to Richmond on the 3d or 4th of April, and returned in a few days; I stopped again in Washington for a day or a large part of a day, and then returned to my home, carrying with me the authority in question. The precise time when it was first shown or delivered to me, I am not able at this moment certainly to state.

Question. On the Sunday to which you refer, state whether Captain McHilt, the officer on duty at the Provost Marshal General's office, was sent for by you or by Mr. Dana, and whether in reply to the summons he came into the office where you were with Mr. Dana, bringing with him the package of papers relating to the 21st district of New York, including Ludington's report, Lott's letter, Axtell's letter, and Tracey's letter, which have been offered in evidence

in this case; and whether, in company with Mr. Dana, you examined these papers in his presence.

Answer. Some person brought in a bundle of papers, of which I think the report of Ludington was one, and these papers were then looked over. I cannot now enumerate the papers in the bundle.

Question. State whether, during the interview, Mr. Dana left the room, while General Fry remained with you, and shortly afterwards returned and remarked to you, "the Secretary wants to see you," or something like that.

Answer. No such thing occurred to my recollection, and I think it cannot have occurred.

Question. In the event that between the 3d of April, 1865, and the 1st of November it had come to your knowledge that frauds were being committed, or had been committed, in the Provost Marshal General's Bureau, or misdemeanors connected with the recruiting service, with which Major Haddock had no connexion, were you authorized to take any action in such a case by virtue of any authority, order, or directions which you had from the War Department?

Answer. In such a case I should have deemed it proper, had I possessed any information valuable to the government and not known to it, to impart that information. This I should have considered my duty, regardless of the fact that I had been requested to prosecute Major Haddock and his confederates.

Question. In that view of the case, what effect did the written order or authorization have touching your action in making investigations in the western division of New York?

Answer. I understood that I was requested by the Secretary to perform certain services for the government, and I understood that the written papers were furnished to me as the evidence of my authority to perform the services.

Question. You have referred in your testimony to a printed letter bearing the name of Captain P. B. Crandall, and addressed to yourself, on the subject of these differences with Major Haddock; please tell the committee who was, if you know, the author of that production?

Answer. Captain P. B. Crandall.

Question. Is it a fact that it was prepared in pencil, or portions of it, in the shape of a memorandum, and put together by you, and written out and afterwards put in print by you?

Answer. On the contrary, Captain Crandall brought the letter to me complete as an account of his official action, and asked me to read it. It was in his handwriting, written in pencil, and all parts of it were there, according to my recollection. It was suggested, I think, by me that it would be well to have it put in print, that it might be more easily read and transmitted to his official superior, General Fry. I have no other knowledge of it, except that it was printed and was transmitted by me, together with a statement from Mr. Monroe, the commissioner of the board, to General Fry or the War Department.

Question. At the time Colonel Ludington visited Utica for the purpose of making an inspection of the provost marshal's office, did you have conversation with him; and in that conversation, did you dispute or deny the truth of the accusations against the officers composing the board of enrolment for the twenty-first district, and did you say, in substance, that the board were entirely honest and reliable, and that all the charges or rumors of charges were without foundation?

Answer. I saw Major Ludington for a short time in presence of several gentlemen, and stated to him briefly my belief with reference to the difficulties and abuses in the business of recruiting, and I did say to him, according to my recollection, that I thought the fullest investigation would prove that Crandall and his associates were honest.

The following general order was also admitted :

[General Orders No. 23.]

HEADQUARTERS DEPARTMENT OF THE EAST,
New York City, March 25, 1864.

The attention of the commanding general has been called to the fact, that the county of Richmond, New York, the town of West Farms, Westchester county, New York, and several other towns within the limits of this department, have made provisions for a bounty of \$300 and upwards, to be paid to persons enlisting in the military service of the United States, and that the corporate authorities of said counties and towns have provided that at least \$100 shall be paid to the recruit, leaving the disposition to be made of the balance (\$200, or upwards, as the case may be,) undefined and to be bargained for by the recruit and the bounty broker, usually with fraudulent representations on the part of the latter. The result is, that the person presenting the recruit for enlistment gets in many cases \$200, or more, and the recruit only \$100.

As numerous deceptions and frauds on the recruits necessarily occur and are daily occurring, under such an arrangement; as it is an outrage to the tax-payers, who intend that the money levied upon their property shall go to the recruit who perils his life for his country, and not to the bounty-runner, who stays at home, and to whom the United States pays a liberal and fixed compensation for his trouble in procuring the recruit, the commanding general hereby orders, that all provost marshals and enlisting officers shall refuse to enlist in behalf of any county or town making such or similar indefinite provision as is hereinbefore referred to, unless such provost marshal or enlisting officer shall be convinced that such recruit has actually received the full amount of the bounty raised in such county or town, and such recruit will not be allowed to part with any portion of his said bounty to any person for any pretended services in enlisting him, or any pretended service to him after his enlistment, even though an agreement be shown; such agreements being almost always fraudulent, without consideration, and contrary to public policy.

It is the unalterable determination of the commanding general of the department to protect recruits from the frauds practiced upon them, and to punish the offenders, if he can reach them, being fully convinced that nothing can be more discouraging to enlistments, or more disreputable to the community, than the depredations which have recently been committed upon persons enlisting into the military service.

Whenever, therefore, a certain amount per man is levied upon a county or town as bounty, he will hold that this amount shall be paid to the recruit, and that any other appropriation of it is unlawful. If the county or town authorities raise money to pay the expenses of recruiting, as well as for bounty, then the amount they appropriate for each purpose should be distinctly and specifically stated; that is, so much as bounty to each recruit, and so much for the person who presents him. If they say in so many words, as one county has done, that the recruit shall have \$200, and the man who presents him \$100, in addition to the fixed sum paid by the United States, however unjust such a distribution may be to the recruit and the tax-payers, there is no authority to interfere with it. The only remedy for the recruit is to enlist where he is more liberally treated, and for the tax-payers to place their money in the hands of men who will not lavish it on runners and bounty brokers.

By command of Major General Dix:

D. T. VAN BUREN,
Colonel and Assistant Adjutant General.

Official:

THOS. WROH, *Aide-de-Camp.*

OFFICE ACTING ASSISTANT PROVOST MARSHAL GENERAL,
Elmira, N. Y., December 23, 1864.

This circular is worthy of the earnest attention of each provost marshal. Its spirit will be made to guide in all matters embraced within its provisions.

JNO. A. HADDOCK,
Major 12th Reg't V. R. C., Act'g Asst. Provost Marshal General W. D. N. Y.

A true copy:

C. McKEEVER,
Brevet Brigadier General and Assistant Adjutant General.

Question. Please look at the letter I hand you, (letter from Captain Crandall to Major Haddock, dated March 13, 1865, handed to witness,) and say to the committee whether that letter ever came to your observation before.

Answer. If it is part of the record of the Haddock court-martial, or if it appears in the printed letter of Captain Crandall, I doubtless saw it.

On being requested by the chairman of the committee to state what he expected to prove in the additional documentary and oral evidence he intended to produce, General Jeffries said :

I expect to show that Captain Crandall, when he was suspended from duty as provost marshal of the 21st district, held in his hands money and bonds which belonged to the United States, and which he had refused at least three times to turn over, on competent orders from superior authority, to wit, Major Haddock and General James B. Fry, Provost Marshal General of the United States.

I expect to show that he was ordered to turn it over to a special officer of Major Haddock, and that he refused; that he was ordered to turn it over to a disbursing officer of the United States who had no connexion with Major Haddock, but who kept his accounts with the treasury of the United States, whose business it was to receive the money, and that he refused to turn it over.

I expect to show that he was directed by Major Haddock to turn it over to his successor in office, who relieved him of the duties of provost marshal of that district, and who was directed to receive and receipt for these moneys which had come to Captain Crandall's hands as provost marshal; that he was going out of office as provost marshal, being suspended from duty, and Major Beall was coming to relieve him; and that Captain Crandall disobeyed the order, and refused to turn over these moneys and bonds to his successor.

I expect, further, to show that this was all known to Mr. Conkling, and that no prosecution was ever made for the violation of these orders.

I expect to show that the county of Oneida was paying a bounty of seven hundred dollars, perhaps seven hundred and twenty-five; that a large number of men during the time that the county was paying this bounty were mustered into service with fifty dollars bounty; that a large number of these recruits deserted.

I expect, further, to prove that Captain Crandall stated under oath that prior to a certain date, which I cannot now remember, but during his administration, and after he had been in office for some time, that of all the recruits who had entered the service, none of them were citizens of Oneida county; and that it was his duty to know that the law required that persons not residents of Oneida county could not be credited to that county; and that these persons who he swore were not residents of Oneida county were by him credited to Oneida county.

I expect to show that that came to the knowledge of Mr. Conkling on the trial of the Haddock court-martial.

I expect to show that there was an order or regulation in force in that district which required the provost marshal, during the time Captain Crandall was in office, to disregard any pretended claim that a recruit was going for a less sum than the bounty offered by the county.

I propose to show that that order, then in force, was disregarded by Captain Crandall, and that it came to the knowledge of Mr. Conkling, and that no prosecution was ever made for it. I propose, further, to show that at that time the call of the 19th of December, 1864, was being filled, and a fund was raised by the supervisors of Oneida county equivalent to seven hundred dollars for each recruit who would enlist for three years; that the quota fixed was calculated on a three-years basis; that a resolution of the board of supervisors authorized each supervisor to recruit for his own town; that he was authorized to draw from the treasurer, or the agent who had control of the fund, an amount of money equal to seven hundred times the quota of his town, and that each supervisor was authorized to do that as a recruiting agent; that when he had finished recruiting,

he settled with the rest of the supervisors, or they settled among themselves; and if he could produce credit sufficient, or certificates of some mustering officer, as, for instance, the provost marshal, showing recruits equal to the amount of quota he was required to pay for. For illustration, if the quota of a town was forty, and that he could produce to the recruiting agents, who happened to be supervisors, forty certificates of credit, he having previously drawn twenty-eight thousand dollars, that would be regarded as the full settlement of that county. I expect to prove, further, that the class of men who were enlisted at that office by Captain Crandall were a disgrace to the service; that the office was notorious as a place at which deserters and bounty-jumpers could be passed and mustered into service; that they deserted in large quantities, and that men, in addition to that, who were physically disqualified, were passed by that board; that the examinations were not conducted in compliance with the regulations; that the surgeon had his office in one place and the provost marshal in another, in different rooms, and that improper men were passed by the board. I expect to prove that these bonds which Captain Crandall refused to turn over under the orders to which I have alluded, were afterwards offered by him to the county supervisors; that he offered to surrender up the bonds to the supervisors who had issued them. I expect to prove that about this time Captain Crandall, in the supreme court of Oneida county, testified that these bonds belonged to the United States; that in a suit in which a man named Richardson was plaintiff, which was an action, as I understand, of replevin, brought by the plaintiff Richardson to recover possession of these bonds, Captain Crandall, in that action, set up as a defence to defeat the plaintiff's right of recovery, the fact that these bonds were the property of the United States, and that he had on several occasions refused to deliver up this property, which on that trial he swore was the property of the United States. I expect to show that Captain Crandall was ordered to give up these bonds, and that he refused.

The CHAIRMAN. Do you deny, as was stated on the other side, that all this, for which it is claimed Captain Crandall ought to have been prosecuted, was known to the War Department before Mr. Conkling had received his authority?

General JEFFRIES. I have no knowledge as to what the War Department knew. I suppose it to be a fact that these papers came up there and were filed in the office, these papers in which certain acts are complained of. As soon as they came into General Fry's hands he asked to have an inspection made, and Colonel Ludington made an inspection and a report, which he handed to his superior officer, Major Hardie, and the next thing we know of is, that a man is appointed to investigate all the frauds of the county.

JUNE 9, 1866.

The last offer by General Jeffries was read.

Mr. HOTCHKISS. The offer above stated is deemed irrelevant, and made for delay, after five weeks have been spent in offering evidence which is deemed irrelevant. And it is objected to because it appears from the evidence already given that at the time, on the 3d of April, 1865, when Mr. Conkling was requested to prosecute on behalf of the government, the War Department had full and complete information of all the allegations, or violations of orders or improprieties of any other kind, and of every other charge mentioned in said offer, that such information, charged or intimated, was contained in papers on file in the War Department, and among them the following: First, the statement of Colonel Axtell, dated February 4, 1865; the letter of Colonel Tracy, February 20, 1865; the letter of Lieutenant Lott, March 4, 1865; the letters of Hon. Ward Hunt and of Captain Crandall, of March 11 and 13, 1865, with other enclosures stating details; in the printed letters of Captain Crandall and Commissioner Munroe, forwarded to General Fry on or about March 15, 1865, by Mr. Conk-

ling, and his letter accompanying the same; and by the record of the Haddock court-martial, showing that such accusations, so far as they were founded in truth, were investigated against the parties guilty.

The CHAIRMAN. The committee will hear evidence of any frauds or misdemeanors of Provost Marshal Crandall of which the War Department did not have notice, provided Mr. Conkling is shown to have had knowledge thereof. The committee will hold that the War Department did have such notice of all such alleged frauds and misdemeanors as are set forth in the papers from the files of the War Department which have been given in evidence in this case.

This evidence is admitted on the ground that if, after Mr. Conkling received his instructions from the War Department, such offences are shown to have come to his knowledge, and they were never communicated to the War Department nor prosecuted by him, it may have some tendency to show omission of duty on the part of Mr. Conkling, provided the committee should find Mr. Conkling had any authority to prosecute Captain Crandall, the last being a matter upon which the committee does not now decide.

The committee, upon the same principle, will not go into evidence touching the alleged frauds or misdemeanors of Crandall, when the said papers from the War Department show that that department had notice during or before the time of Mr. Conkling's service of such alleged frauds or misdemeanors. This upon the ground that Mr. Conkling could not have been bound to report facts already known to the War Department, and that he could not prosecute military offences for the trial of which the War Department had omitted to order any competent tribunal; but the exclusion of evidence against Mr. Conkling's conduct will exclude evidence in his favor as to the same conduct.

The following papers were offered by General Jeffries and received in evidence :

WAR DEPARTMENT, *Washington City, April 3, 1865.*

SIR: I am instructed by the Secretary of War to authorize you to investigate all cases of fraud in the provost marshal's department of the western division of New York, and all misdemeanors connected with recruiting. You will from time to time make report to this department of the progress of your labors, and will apply for any special authority for which you may have occasion. The Judge Advocate General will be instructed to issue to you an appointment as special judge advocate for the prosecution of any cases that may be brought to trial before a military tribunal. You will also appear in behalf of this department in any cases that it may be deemed more expedient to bring before the civil tribunals.

Very respectfully, your obedient servant,

C. A. DANA, *Assistant Secretary of War.*

Hon. ROSCOE CONKLING.

A true copy :

C. McKEEVER,
Brevet Brig. Gen. and Asst. Adjt. General.

WAR DEPARTMENT, *Washington City, April 3, 1865.*

Hon. Roscoe Conkling having been appointed by the Secretary of War to investigate transactions connected with recruiting in the western division of New York, all telegraph companies and operators are respectfully requested to afford him access to any despatches which he may require for the purpose of detecting frauds and bringing criminals to trial.

By order of the Secretary of War:

C. A. DANA, *Assistant Secretary of War.*

A true copy :

C. McKEEVER,
Brevet Brig. Gen. and Asst. Adjt. General.

WAR DEPARTMENT, *Washington City, April 3, 1865.*

Hon. Roscoe Conkling having been appointed by the Secretary of War to investigate transactions connected with recruiting in the western division of New York, all provost mar-

shals and other military officers are hereby directed to give him free access to all their official records and correspondence, and to furnish him certified copies of any papers that he may require.

By order of the Secretary of War:

C. A. DANA, *Assistant Secretary of War.*

A true copy:

C. McKEEVER,
Brevet Brig. Gen. and Asst. Adjt. General.

WASHINGTON, D. C., March 31, 1865.

SIR: In obedience to paragraph 78, Special Order No. 130, Adjutant General's office, current series, and to your verbal instructions, I made an inspection of the board of enrolment for the twenty-first district, State of New York, and have the honor to report as follows:

The prominent men of that district, the supervisors of the various towns, and people generally, united in a determination to fill its quota under the last call without sending citizens of the district. To this end, a bounty of seven hundred and twenty-five (\$725) dollars was provided for every recruit, and each supervisor was authorized to procure men. If recruits could be had for less than the above-mentioned sum the difference accrued to the supervisor. The board of supervisors thus became a board of bounty brokers.

Contracts were made with a notorious bounty broker, Aaron Richardson, for a supply of men.

This machinery for filling the quota being properly constructed, with great consideration for the district, and regardless of the rights of the government, there was found only one difficulty in its practical operation.

An order from the acting assistant provost marshal general of the western division of New York required a deposit with the officers of the United States five-eighths ($\frac{5}{8}$) of the bounty paid recruits. This was objectionable to the class of men furnished by the supervisors and contractor Richardson, who very greatly preferred taking care of their own funds; and, therefore, recruiting did not progress rapidly.

Some ingenious men of the district devised a cunning scheme to obviate this difficulty. Each recruit was instructed to say to the provost marshal that he desired no local bounty; that he went from better motives, and that government provided as large bounty as he cared to accept.

The provost marshal admired the disinterestedness of the recruit and mustered him in.

Men were now obtained rapidly. Bounty-jumpers came to Utica by car-loads, and, to use their own slang, the enrolling board of twenty-first district became "a perfect walk." These facts are notorious throughout the western division of New York, and are amply proven by papers referred to me from Provost Marshal General's office, and herewith returned. During the administration of Captain Crandall, provost marshal twenty-first district, from January 24 to March 14, 1865, the records of his office show that there were enlisted forty-one (41) men who refused all bounty, two hundred and sixty-nine (269) who accepted fifty (\$50) dollars, thirty-five who accepted from one hundred (\$100) to two hundred (\$200) dollars, and one hundred and twenty-three (123) who received more than three hundred (\$300) dollars. In all, four hundred and sixty-eight were mustered in by Captain Crandall, of whom Major Haddock, acting assistant provost marshal general of western division, New York, reports that fifty-five (55) per cent. deserted before starting to the field.

Had Captain Crandall retained in his hand five-eighths of the bounty received by the two hundred and fifty deserters, there would have accrued to the government one hundred and nine thousand dollars. The amount paid over by him was very small, but I was unable to ascertain it exactly.

Upon the 13th March the enrolling board of this district was suspended, and Major Beadle, 3d regiment Veteran Reserve Corps, relieved Captain Crandall.

Major Beadle states that he found the affairs of the office in confusion. His statement is appended, marked exhibit A.

Captain Crandall admitted that he had in possession \$26,753 belonging to recruits and bounty brokers, but refused to turn it over for reasons given in his communication to Provost Marshal General, dated March 11, 1865, herewith returned.

It is proper to state, in relation to the violation of Major Haddock's order to retain five-eighths of recruits' bounty, that in the first seventeen cases Captain Crandall explained why he did it, and Major Haddock was satisfied with the explanation. Upon this Captain Crandall based his subsequent action. The correspondence is annexed, marked exhibit B. Aside from this transparent scheme to defraud the government by filling the quota of their district with credits instead of men, there is nothing objectionable in the official conduct of the board. Some communications upon file in Provost Marshal General's office allege that the surgeon passed unfit men; but I am disposed to regard these cases as incident to haste and overwork, and not as showing criminality upon the surgeon's part.

The character of the surgeon (Babcock) has been above reproach, as also that of Captain Crandall. Commissioner Monroe has not enjoyed so fully the confidence of his fellow-citizens.

Misled by sophistry, by an undue desire to serve well their friends, and by constant pressure from cowardly neighbors dreading a draft, they did this great wrong to their country, disgraced themselves, and brought upon their district a wide-spread reputation for rascality.

I respectfully recommend that every member of the board of enrolment for twenty-first district of New York be dismissed the service, and that the money in possession of Captain Crandall be seized. And because of the disgraceful prejudice existing among the demoralized

I do not regard the conduct of the board as legally guilty, but morally they have perpetrated a most glaring and inexcusable fraud upon the government they were sworn to serve. They quieted their consciences by casuistry, and regulated their actions by the counsel of unscrupulous legal advisers.

people of that district against filling their quota with decent men, thus preventing one of their own citizens from doing his duty to his country as well as his county, that an officer of the army be detailed as provost marshal of that district.

I have the honor to report further that incident to the inspection of the twenty-first district, facts in relation to the administration of Major John A. Haddock, acting assistant provost marshal general for western division of New York, were educed, which led me to the conviction that he is unfit for the position he holds.

Men of undoubted character charge him with being insolent and abusive in discharging his duties and grossly immoral; that he is in collusion with bounty brokers, and prostitutes his official position to personal ends.

For proof of these charges I refer, at Utica, to the postmaster and Hon. R. Conkling; at Elmira, to the mayor, J. J. Nix, Postmaster D. F. Pickering, Provost Marshal J. S. Wright, Colonel B. F. Tracy, commanding post, Captain Eugene Diven, and Peter A. La France; also to Colonel L. C. Baker.

I would also call attention, respectfully, to the necessity for an order regulating the disposition of the money retained from bounty of recruits while they are still at the provost marshal's rendezvous. General Order No. 305, Adjutant General's Office, does not govern in such cases.

Very respectfully submitted:

E. H. LUDINGTON,
Major, Assistant Inspector General.

Brevet Brigadier General J. A. HARDIE,
Inspector General U. S. A.

Respectfully referred to the Provost Marshal General.

JAS. A. HARDIE, *Inspector General.*

WAR DEPARTMENT, April 1, 1865.

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,
Washington, D. C., April 1, 1865.

Respectfully submitted to the honorable Secretary of War:

1. I recommend that Major J. A. Haddock be relieved from duty as acting assistant provost marshal general of western division of New York, and that his conduct be further investigated, and that Major S. B. Hayman, U. S. A., be detailed for that post. Major Hayman is on duty in Indiana, and can be spared for the purpose.

* * * * *

[Special Orders No. 130.]

[Extract.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, March 17, 1865.

* * * * *

78. Major Elisha H. Ludington, assistant and inspector general United States army, will proceed to New York, Elmira, and Utica, New York, and make such inspections at those places as shall be indicated to him by the Provost Marshal General. Having discharged which duty, he will return to his station without delay. He will report before leaving the city to Provost Marshal General Fry for specific instructions.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant General.

A true copy:

C. McKEEVER,
Brevet Brigadier General and A. A. G.

[General Orders No. 305.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, December 27, 1864.*Regulations concerning moneys taken from soldiers at draft rendezvous.*

1. A paymaster will be stationed at such of the draft rendezvous as the Adjutant General may designate.
2. When an enlisted man arrives at a draft rendezvous, any money he may have with him exceeding twenty dollars will be taken and placed in the hands of the paymaster, who shall enter the amount on a check-book to be given the soldier at the time his money is taken. The entry will be certified in the check-book as the correct amount due the man by the officer commanding the draft rendezvous, or some officer to whom he shall assign that duty, and by the paymaster. The same amount will be entered on the muster and descriptive list of the soldier.
3. A monthly list of names of men from whom money is taken, with regiments to which they are assigned, amounts taken, and the name of the paymaster to whom the amounts were turned over, shall be made out by the commanding officer of the draft rendezvous, and sent by him to the Adjutant General and to the Paymaster General. All desertions, deaths, and discharges will be carefully noted on these lists.
4. The paymaster shall render a monthly account current, with vouchers, to the Paymaster General, and send a copy of the account current to the Adjutant General of the army, for reference in that office. In this account current the amounts received shall be credited to the men from whom they are taken, and all transactions under this order, with names of all the parties concerned, will be carefully noted for the month embraced.
5. The paymaster shall deposit all moneys received in a public depository of the United States, or a national bank most convenient to his station. In case any of the money received shall be of State bank or other money not bankable at *par*, the sum shall be converted into bankable money at the market rates, and the proceeds only of such conversion entered to the credit of the soldier; the cashier of the depository or bank certifying in the check-book the amount in dollars and cents of discount lost by the conversion.
6. When a soldier desires to assign his money, or any part of it, to his family, or other person, he shall give an order in duplicate on the paymaster for the amount; and the paymaster shall then pay the amount according to the order. The order shall be witnessed and certified as genuine by the commanding officer of the rendezvous, or the officer specially charged with that duty. The paymaster will issue his check on his depository payable to the order of the assignee, and himself deliver or mail it direct to the assignee, in no case permitting it to fall into the hands of the soldier. Such checks, with number, date, and amount, will be charged in the soldier's check-book, and on his muster and descriptive list, to be deducted from his deposit, and will also be borne on the paymaster's account current. To guard against collusion between the soldier and the assignee, by which the money, or a part of it, may be returned to the soldier for dishonest purposes, the paymaster should be satisfied that the assignment is *bona fide* and to the family of the soldier or a lawful creditor.
7. After arriving at his regiment, the soldier may claim payment of the amount of his deposit from the paymaster who pays his regiment, on the first regular payment being made him. The showing in his check-book, corroborated by the entry on his muster and descriptive list, will be taken as evidence of the amount due him, which amount will be regularly entered on the muster and pay roll. If paid his deposit by the paymaster, he shall take the whole amount or none, and shall surrender to him his check-book; but if he so elect, he may leave it in the hands of the government; in which case it will be held subject to the rules of deposits laid down in paragraph 1385, General Regulations.
8. In case of death, or discharge, the money will be drawn from the treasury in the same mode as other dues from the United States. In case of men charged with desertion, satisfactory proof must be produced either of pardon, or of a removal of the charge, or that the soldier has served out his time and been properly discharged.
9. At the less important rendezvous, where it is not deemed necessary to station a paymaster, an officer of intelligence and good character, preferably one who has given bonds to the United States, will be appointed to receive the moneys. He will comply with the above requirements so far as they are applicable, and will turn over the amounts to the nearest paymaster—who shall be one of the paymasters of the rendezvous—once in thirty days, together with a triplicate copy of the list prescribed in paragraph 3, and any other information which the paymaster may require to keep his accounts. The sums collected by paymasters under this paragraph are to be held subject to the order of the Paymaster General, balances to be turned over, at any time, upon his order to paymasters engaged in the ordinary duties of the department.
10. All sums of money which may have been heretofore taken from soldiers at draft rendezvous, and which remain under the control of any officer, will, as soon as this order goes into effect, be turned over to the officer appointed under its provisions to receive them. All requisite information will at the same time be furnished to enable the officer receiving it to

give credits to the proper soldiers for the several amounts due them, and no pains will be spared to secure the prompt transfer of the money to them.

By order of the Secretary of War :

E. D. TOWNSEND,
Assistant Adjutant General.

Official :

———, A. A. G.

General JEFFRIES also made the following offers of evidence :

Order of Major John A. Haddock, dated March 10, 1865, in relation to disposition of moneys and securities in Captain Crandall's hands.

(Excluded, upon the ground that it relates to the conduct of Captain Crandall, of which, it appears by the files of the War Department, that department had notice on the 3d of April, 1865.)

Copy of circular No. 8, by Major Haddock, to Captain Crandall, dated January 7, 1865.

(Objected to, on the ground that the evidence is embraced within the previous ruling.)

Mr. JEFFRIES. I offer this paper to prove that Captain Crandall was directed to keep a record of the amount of bounty money paid to recruits and the disposition made of such money so paid to the provost marshal for the recruit. I propose to prove, in connexion with this, that Captain Crandall kept a record, which has been offered in evidence, which did not show the amount of bounty paid to the recruits, or to the provost marshal for the recruits ; and that, insomuch as it differed from the amounts actually paid, such record was false ; that this record has never been on file in the War Department, nor brought to the notice of any officer at the War Department, prior to the commencement of this investigation ; that these records were presented to the Hon. Roscoe Conkling, and were in his possession on the Haddock trial.

The committee sustained the objection, on the ground that it appears by the papers from the War Department that that department, at the time of Mr. Conkling's service, had full knowledge of the facts in regard to the bounty which the offer proposes to prove the record misrepresented, and of the manner in which the record was kept.

Circulars from Major Haddock to Captain Crandall, dated January 7, 1865.

(Excluded by the previous ruling of the committee.)

Certificate by Colonel Richard J. Dodge, dated May 15, 1866, the acting provost marshal for the State of New York, relating to the number of desertions from the military service in the 21st district of New York during the administration of P. B. Crandall.

(This paper is excluded by the committee, upon the ground that it purports to be a statement by Colonel Dodge of what is shown by certain records alleged to be in his possession, but of which record his certificate furnishes no copy.)

Letter, dated War Department, Adjutant General's Office, Washington, May 12, 1866, to Brevet Major General J. B. Fry, in regard to what prosecutions were conducted by Mr. Conkling.

(Excluded by the committee, as being secondary evidence.)

The testimony on the part of General Fry was here closed.

JUNE 9, 1866.

THEODORE ALLEN sworn and examined.

By Mr. HOTCHKISS :

Question. Where do you reside ?

Answer. New York.

Question. Where did you reside in January, February, March, and April, 1865 ?

Answer. New York city.

Question. What business were you engaged in in January, 1865 ?

Answer. Bounty broker's business.

Question. Did you, at the solicitation of any one, in January, 1865, meet Colonel L. C. Baker, of the War Department, at any place in the city of New York?

Answer. Yes, sir.

Question. Where did you meet him?

Answer. I met him first at the office of Wilkes's Spirit of the Times.

Question. Did you then have any conversation with General Baker?

Answer. Yes, sir; I had a conversation.

Question. What was that conversation?

(Objected to by General JEFFRIES.)

Professional statement by Mr. HOTCHKISS as to the way in which it is proposed to make the answer to the above question competent:

We propose to show that he, the witness, then and there entered into an arrangement, in his own behalf and in behalf of his partner on the one side, and Colonel Baker, in behalf of General Fry, Provost Marshal General, on the other part, in relation to enlisting bounty-jumpers, which was followed up by a personal interview with General Fry by the witness, in which the entire arrangement with Baker, which is asked after in this question, was detailed to General Fry, and personally sanctioned by him; that in pursuance of that arrangement the witness returned to New York and carried out the arrangement, which we propose to prove; that a recruiting office was started at Hoboken by the witness and his partner for the purpose of enlisting bounty-jumpers; that an officer of the regular army was detailed at that office to muster them in by General Fry; that General Fry knew of this arrangement, and all about the starting of this office, and all the particulars; that on one day from one hundred and eighty-six and upwards of known notorious bounty-jumpers were enlisted in the lower room of the office, without pay, and that they were marched into another room to get their pay and there arrested; that when about that number had been thus arrested, a large number, who were waiting to go through the process, discovered the trick and broke up the day's proceedings; that papers, regular on their face, certifying to the mustering in of these men as recruits, were made out by this mustering officer, who had been detailed there by General Fry; that in pursuance of the arrangement made with the witness by General Fry, credits for these bounty-jumpers, who had thus been enlisted, and who had not been paid anything, were sold to Mayor Cleveland, of Jersey City, for which he paid down \$66,000 to the witness; that subsequently he paid to the witness's partners in the recruiting office another large sum for these credits; that of this subsequent sum \$54,000 was taken possession of by Colonel Ilges, and retained by him as three hundred on each recruit held by him, pursuant to the practice prevailing, until the recruits should be sent to the front on some regular order of that department; that these upwards of one hundred and sixty-eight jumpers thus arrested were sent to Fort Lafayette, being the same one hundred and sixty-eight or upwards of bounty-jumpers whose credits or enlistment papers had been sold to the authorities of Jersey City to fill the quota of Jersey City with; that in a subsequent interview with General Fry, in his office, between General Fry and the witness, it was agreed that if this witness would go to Utica, and there procure evidence, at all hazards, to show Captain Crandall guilty of fraud in connexion with his office, and showing Roscoe Conkling's complicity with him, so as to destroy Mr. Conkling, General Fry would give orders that that \$54,000 in the hands of Colonel Ilges should be paid over to the witness or his partners; that the witness, at this interview with General Fry, informed General Fry that he had been to Utica, and was acquainted with the business as conducted there in enlisting men; that he thought Crandall was innocent, was an honest man, and any evidence he could get that

was truthful would show it, but that the evidence would show Major Haddock to be guilty; that General Fry told the witness that he did not want any evidence against Haddock, but he did want to destroy Conkling—that Conkling was a champion of Crandall's, and was taking steps against Haddock; that he must get the evidence against Crandall, and something that would implicate Conkling, at all hazards; that in pursuance of this arrangement the witness went to Utica, and, on his return from Utica to New York, telegraphed to General Fry that he had been to Utica, and had got everything possible, or words to that effect, and therefore the \$54,000 was paid over to the witness, or his partners, in pursuance of General Fry's order, telegraphed to the custodian of the money in New York or its vicinity, or to General Baker; also other facts and particulars showing that General Fry revealed to the witness, in strict confidence, his, General Fry's, purpose to fasten some imputation upon Mr. Conkling, and his, General Fry's, willingness to have \$54,000 made over to the witness for aiding his, General Fry's, designs against Mr. Conkling; that General Fry was privy to the whole transaction referred to in the offer to give evidence, and was an actor in it.

JUNE 12, 1866.

Examination of THEODORE ALLEN resumed:

General JEFFRIES. Before this witness proceeds to testify, my attention has been called to a fact which, if true, and which I do not know, but which I will ask the indulgence of the committee to inquire into upon his *voire dire*, affects his competency as a witness. I understand that the witness has been in the penitentiary.

The CHAIRMAN. The witness is protected against answering that question if he thinks it would tend to disgrace or degrade him.

WITNESS. There is no act of my life that I am afraid to answer on account of the disgrace of it.

The CHAIRMAN. The question may be put.

General JEFFRIES. Have you been in the penitentiary?

Answer. Never in my life, sir.

By Mr. HOTCHKISS:

Question. Did you at any time after your interview with Colonel Baker in New York come to Washington and have an interview with General Fry?

Answer. Yes, sir.

Question. At whose instance did you come to Washington?

Answer. I think it was at Colonel Baker's suggestion.

Question. Can you state at about what time you went to Washington and had this interview with General Fry in relation to the matter that has been inquired of?

Answer. I think it was the last part of February—the 28th.

Question. Did you have a conversation with General Fry upon the subject of recruiting men in the city of New York?

(Question objected to as leading, and objection overruled.)

Answer. Yes, sir; not in New York, but in Hoboken, New Jersey.

Question. When you first met General Fry at this interview, had you ever seen him before?

Answer. No, sir.

Question. Will you state the manner of your introduction to him, and what was said upon the subject of who you were, and your business?

Answer. I came on, and called at the War Department, and sent in my card to General Fry. I was asked to walk in, and introduced myself. I asked if this was Fry, and he said "yes." I told him my name was Theodore Allen, of New York, and that I had come on to see him at the request of Colonel Baker. I think it was at the request of Baker.

Question. What did General Fry reply?

Answer. He said "yes," he was glad to see me.

Question. Did you then make known your business, or did he make inquiries of you?

Answer. He said that he wished to see me in regard to the arrangements that had been made in New York for the capture of bounty-jumpers.

Question. Who was present at this time?

Answer. There were two clerks there, but before he spoke he asked them to leave the room, as he had a private matter with me. There was nobody present.

Question. Now, tell the committee in your own language all that passed between you and General Fry—all that was said upon that occasion. Tell just what you recollect took place there.

Answer. He said he had been informed of the plans that had been made between Colonel Baker and myself for the capture of bounty-jumpers, with the view of breaking up bounty-jumping.

Question. Well, what further?

Answer. And he wanted to know if he had understood the plan rightly, and what it was. I told him I had seen Baker and talked with him on this matter, and that we had a plan arranged, and had hired an office at Hoboken, because they would go to Hoboken to enlist and desert before they would to New York, because at New York they would be known. They would not have the opportunity of enlisting in New York; that they would if they came to Hoboken, it being out of the State. I told General Fry it would be necessary for us to have a mustering officer appointed at our office in Hoboken, and that I thought Colonel Ilges, who had been at our office in New York as mustering officer, would be a good man for our Hoboken office. I think General Fry said "yes." I told him our plan was to run the office, and have the mustering officer, and enlist legitimate recruits for the army who would be brought there, and with these legitimate recruits we would take from New York the most notorious bounty-jumpers; every day to have it set forth that it was a perfect "gift" or "walk away," and enlist them at Hoboken and pay them their bounty and let them desert, and then he would go out and spread it to his companions that it was an "easy thing," and on a certain day we would have them all come and "take them all in," and have them "bagged" or arrested; and as to those who did get their bounty, we supposed they would probably come back the last day to get another taste of it. General Fry asked me how many I thought we could get. I told him I thought we could get from a thousand to fifteen hundred. I think there was some person came in at this time, and he said, "Well, all right;" that I should go back and report to Baker and work the project up as well as we could—or something to that effect.

Question. Was there anything said about credits at that time and as to how you were to be reimbursed? If so, state what it was.

(Objected to.)

Question. If anything was said upon the subject of credits, and as to how you were to be rewarded, or how you were to make anything, state what it was.

(Objected to, and objection overruled.)

Answer. At the time I spoke to him of the mustering officer, I wanted these; I told him it would be necessary for Colonel Ilges to have the power of crediting these men that were enlisted in New Jersey, because that had been part of my arrangement with Colonel Baker; that would be the only inducement for giving my business up in New York; the allowance of the credits was the only way I was to get pay, and then we could sell the credits to any city, town, or county, or even out of the district, or any part of the State of New Jersey. When we commenced recruiting there, we went to work and enlisted regular recruits or legitimate recruits. Now, suppose we took in twenty: Now there had been an order issued by the War Department that no regular army officer on that duty

should be allowed to muster men in and give the credits; and when the men came there to enlist we had to pay them their bounty; and if we paid the bounty without any credits, of course we could not get our money back; Colonel Ilges was a regular army officer, of the 14th infantry.

Question. What did General Fry say to that?

Answer. He said that he would attend to that; that that was all understood with Baker; that was the substance of the conversation.

Question. If there was ever anything said between you and him at that time as to whether this rule should apply to the bounty-jumpers as well as the honest recruits, state it.

Answer. Yes; the understanding was, that the "jumpers" were to be mustered in the same as the regular recruits, and to pay their bounty and allow them to desert and have credits given for them.

Question. If anything was said with reference to the disposition of the credits of the men enlisted the last day, state what it was.

Answer. I do not know that anything was said about the last day, only that the same thing should be done all the way through, and the last day was to be taken in with the rest; only I do not know that anything about the last day was mentioned separately.

Question. Then you mean that there was no difference to be made between the last day and any other?

Answer. Nothing.

By Mr. HOTCHKISS:

Question. Was anything said to you by General Fry about what he would do in case he wanted to see you again?

(Question objected to as leading, and objection overruled.)

Answer. There was nothing said.

Question. Did you return to New York?

Answer. Yes, sir.

Question. Now, you give us the history of the carrying out of this arrangement at Hoboken—what you did.

(Question objected to on the ground of immateriality, and objection overruled.)

Answer. Well, we went to Hoboken and hired Odd-Fellows' hall; there were three in the firm—Allen, Reilly, and Hughes—and we went on to open it. According to instructions from General Fry, Colonel Ilges came there.

By General JEFFRIES:

Question. Do you know that fact, to your own knowledge?

Answer. Yes, sir; I saw the instructions myself; we went on and enlisted recruits there, and mustered in the legitimate recruits with four or five a day of the most notorious bounty-jumpers we could get to come there, and when the bounty-jumpers were enlisted with the other recruits, we paid the legitimate recruits their bounty, and had them uniformed and sent to their regiments; but the bounty-jumpers we took out the back way from the legitimate recruits and let them go.

Question. Who superintended this operation?

Answer. Well, Ilges was there as a mustering officer, and whatever was done was according to his orders. I took the jumpers out the back way myself, and the guards were ordered by Colonel Ilges to allow me to pass out all men I saw fit. Reilly took some of them out probably, but most of them, I think, I took out myself. We went on this way seven or eight days, and I think the highest number we let escape in any one day was ten. In the mean time we sent to four or five of the most notorious bounty brokers in New York, to go through New York, and to induce all the other notorious bounty brokers to have their

"jumpers" there on the 10th, as that was to be the grand gala day; that they were all to be allowed to come and get what they wanted on the 10th of March and then go away.

By Mr. HOTCHKISS:

Question. I desire to inquire in relation to the bounties that were paid prior to this last day during this period when you were taking in the legitimate recruits and the four or five bounty-jumpers per day, and who paid them, and what sums they received?

Answer. I think, up to the fourth day after we had opened, all the bounties that were paid we paid legitimate recruits; the recruits who came there generally came with friends or with brokers, and the recruit would have an understanding with the man that came with him that he was to receive a certain portion of his bounty. We sometimes would give the recruit four hundred dollars and the broker two hundred, and if the recruit came alone he would get the whole amount, and nothing would be retained for ourselves; but if the broker came with him we always expected to make twenty-five or fifty dollars off him. All—jumpers and all—were paid. We paid this money all ourselves, because we had not yet sold any credits; there had been no supervisors in to buy the credits. This was the local bounty we were paying; we had nothing whatever to do with the government bounty. Up to the end of three or four days we had not sold any credits, but had advanced the money without getting any return; but on or about the fifth day the supervisors came in, and then we commenced selling the credits; on the fourth day we were brought to a stop, because we had paid out all the money of our firm.

Question. How much money had you paid out up to that time?

Answer. I think we had paid out about \$50,000; yes, we paid about \$75,000; I borrowed \$40,000 for the firm; then the supervisors came in and bought the credits for the previous four days; we were there seven or eight days.

Question. Describe the last day.

Answer. On the day before the last day we hired, in connexion with the basement extending through Odd Fellows' Hall, the lecture-room or ball-room, up stairs. On the night before—that is, the evening of the 9th—Colonel Rife came on with a company of soldiers, I think, from Washington, I am not positive, and they were marched up into the ball-room, and remained there that night, until the morning of the 10th. On the 10th about two thousand bounty-jumpers came there; they came through the basement and passed through the entry-way, where I met them at the door; if I knew them to be jumpers they passed in before the surgeon; they passed before the surgeon and went through into a back room, where the clerks made out enlistment papers, all ready for them to sign their names, and then started to go out of the back way; and instead of going out, were taken up stairs into this ball-room and there were placed under arrest.

Question. How were they induced to go out into the back way?

Answer. They understood that, as soon as they signed their names, they were to make their escape out of the back way, and that I was to pay the broker that brought them. They were to go to New York, and not wait for their bounty. Their bounty broker was to remain in the front office or reception-room. We worked until about half past one, and had about one hundred and eighty, when the guard in the ball-room—it being very crowded—shoved aside the curtains, and the crowd in the street saw the soldiers in uniform with their muskets, and, of course, gave the alarm, and they all made a raid on the ferry. We had about one hundred and eighty men when the stampede commenced, and the brokers, not liking the idea of leaving me with their money, wanted to get the bounty from me for the recruits. They were waiting in the front, and supposed I went round to the door near the Hoboken ferry. In the mean time, somebody among

these brokers that had passed these men in had put chalk on their backs, and they went to the ferry to look after their recruits. All that had passed in jumpers went to the ferry with chalk on their backs, so that when men stationed there saw a man crossed with chalk they nabbed him, and in that manner they caught the bounty brokers at the ferry.

Question. What was done with these bounty brokers and men?

Answer. That night at about eleven o'clock we bought subsistence for them, and they had supper that night. Colonel Baker came over and had them brought out one at a time. They were becoming restless, and were attempting to cut through the floor-way. Colonel Baker went over and had them brought out one at a time; examined them, and found that they had pistols and pocket-knives, which he took away, and then he had them handcuffed together, and then they were taken to Fort Lafayette.

Question. How many credits did you get?

Answer. We got credits for all that were enlisted. We found on this day four honest recruits had got in with the jumpers, and they were sent to the regiment and paid their bounty, but we got credits for every man that was enlisted.

Question. What was done with these credits?

Answer. They were sold to Mr. Cleveland, mayor of Jersey City.

Question. What became of the men?

Answer. They were taken to Fort Lafayette, and remained there for awhile, and were discharged.

Question. How much was the first instalment Mayor Cleveland paid?

Answer. I don't know how much he did pay first, because at that time Reilley was the treasurer. He received the money. I think it was \$66,000 that Reilley received first.

Question. You did not pay anything to these recruits?

Answer. No, sir, not anything to any recruit that last day, except to these four honest recruits that were sent to the camp, or to headquarters.

Question. How much was received from Mayor Cleveland at the last instalment?

Answer. I do not know.

Question. How much was it altogether?

Answer. It was one hundred and twenty-six thousand dollars altogether.

Question. Which men did you sell to Mayor Cleveland?

Answer. The bounty-jumpers we caught the last day.

Question. Did he know it at the time?

Answer. I would not like to answer that.

Question. How soon after this last day was the money paid over and the matter fixed up?

Answer. I think it was within four days probably.

Question. Did you pay any money to Colonel Ilges? If so, how much, and for what purpose?

(Objected to; objection overruled.)

Answer. I did not pay him any.

Question. Was any money paid over to Colonel Ilges?

Answer. Yes, sir.

Question. How much?

Answer. Fifty-four thousand dollars.

Question. At what time was that money paid over?

Answer. When the last payment was made by Mayor Cleveland to Reilley.

Question. Were you present when it was paid over?

Answer. I was.

Question. By whom was it paid over to Colonel Ilges?

Answer. By either Reilley or Mayor Cleveland. It was stopped by Colonel Ilges as it was being paid over, or rather passed from Mayor Cleveland to

Reilley. Colonel Ilges said there was an order in existence that made that his duty, and he had no counter order from the War Department.

Question. In what manner was it paid over?

Answer. When Mayor Cleveland was paying the money Reilley sat at the table, and I sat at one end of it. Colonel Ilges was sitting at the table also. When Mayor Cleveland was paying the money to Reilley Colonel Ilges stopped him, and said he wanted to detain fifty-four thousand dollars of that money, being three hundred dollars for each of his recruits. His general orders from the War Department were that he should retain that sum, and also stating that he had not received any orders from General Fry or Secretary Stanton to allow the whole of this money to be paid, and that, therefore, he felt it his duty to detain fifty-four thousand dollars till he was otherwise ordered by the War Department. I don't think that the money passed into Reilley's hands. I think Reilley said that it would be all right, and that it passed from Mayor Cleveland, and then Reilley consigned it to Colonel Ilges. I think that was it. I am sure that it never went from Mayor Cleveland to Colonel Ilges direct.

Question. What next happened in the history of this transaction? State whether you were telegraphed to by General Fry to come to Washington; and if so, if any telegram was received by you from General Fry, state what it was. Did you come to Washington?

Answer. Yes, sir.

Question. About what time?

Answer. I think about the 18th or 20th of March.

Question. Who did you see?

Answer. General Fry.

Question. Was anything said about what had brought you there? Was anything said between you and General Fry as to what had induced you to come to Washington?

(Objected to, and objection overruled.)

Answer. I sent in my card to the War Department. I first saw the messenger, who told me that General Fry could not be seen, as it was past the hour for receiving anybody. I told him it was very important that I should see General Fry, and if General Fry knew I was there he would see me. He took my card. I then saw General Fry and told him I came in response to a letter or telegram from him to Colonel Baker, requesting me to come to Washington and call on him.

Question. What did General Fry answer to that?

Answer. He said yes; that he had telegraphed to Colonel Baker that he wished to see me; that he understood we had not been quite as successful in the Hoboken raid as we had expected. He then asked what had become of the money that had been received. I told him that I had it all, or the firm had it, with the exception of fifty-four thousand dollars that Colonel Ilges had retained. He asked if Colonel Baker had ever asked me for any part of that money. I told him no, he had not, and that Colonel Ilges held fifty-four thousand dollars of that money, and that I considered I was entitled to it according to the agreement between General Fry, myself, and Colonel Baker, and that Colonel Ilges held it and would not pay it over till he was ordered to do so by General Fry, on the ground that the general order would not allow him to do so unless General Fry ordered him to do so. He then said that that was all well. He said, "We shall see about it." Said he, "The matter I wanted to see you most about was with reference to recruiting affairs at Utica." I told him I was acquainted with a party named Burke, and another named Richardson, who were doing recruiting business at Utica, and I thought I could get all the information possible. He said he thought so, too, and that I was just the person to get that information, and for that reason he had sent for me, because

he would not trust any of Colonel Baker's officers. He said there appeared to be in Utica enormous frauds in the provost marshal's department as it was conducted by Captain Crandall, and that he wanted to get at these frauds; that he had tried and had not been successful, and that he wished me to go to Utica. I told him I thought, from what I had known of recruiting in Utica, and from what I had heard, that if he had found out any frauds in Utica I did not think they would implicate Captain Crandall, but would point more directly to Major Haddock. He said he did not want any evidence against Major Haddock, but against Captain Crandall; and he also wanted evidence that would implicate Mr. Conkling in the frauds, because he had set himself up in opposition to him (General Fry) as the champion for Captain Crandall, and that he wished me to proceed immediately to Utica and get that evidence. He said he wished me to go to Utica and get evidence that would implicate Mr. Conkling in the frauds with Captain Crandall at all hazards, and that while I was gone he would order this money that Colonel Ilges held to be paid over to me. I told him it was better that it should be paid to Reilley, as he was the treasurer. He said the order should be made. That closed the conversation. I then left and went back to New York.

Question. Was anybody present at the time?

Answer. There was no one present during the conversation. When I went into the room there was some one else there standing at the right-hand side of the table, and he requested him to step on one side, and he did so. There was a person came in. It was some member of Congress, but I can't recollect the name.

Question. When this conversation was going on were you standing or sitting?

Answer. I was standing.

Question. Was General Fry?

Answer. He was standing, too.

Question. Describe the scene.

Answer. I was standing against the wall this way, (witness describes,) and General Fry stood with his hands on my shoulders. He had one hand on my shoulder first, and then placed both hands, one on each shoulder.

Question. When he stood there, with both hands on your shoulders, what did he call you?

Answer. I cannot recollect every word he said.

Question. Well, state what you remember.

Answer. I can't recollect the exact words.

Question. What, as near as you can recollect, in calling you by name, did he call you, when he stood there with his hands on your shoulders?

Answer. I can't say exactly what he did say.

Question. Well, as near as you can say?

Answer. I don't know as I could say. I can't recollect.

Question. Did you return to New York?

Answer. Yes, sir.

Question. How long, after returning to New York, did you remain there before you had any further communication with General Fry?

Answer. Well, I think it was three days; probably three days. I think it was the third or fourth day. It might have been five days. It was four or five days, at all events. I can't tell exactly how long it was.

Question. Did you reveal to any one what happened between yourself and General Fry?

(Objected to; objection overruled.)

Answer. I did.

Question. State to whom.

Answer. To Marcus C. Stanley, to Reilley Moloy, and to — Hughes.

Question. Did you have consultation with Stanley in relation to this matter, and act under his advice in relation to it?

Answer. I did.

Question. What was done in pursuance of that consultation, and what course did you and Stanley, or either of you, adopt?

Answer. I told Stanley of the conversation I had with General Fry, and I told him I thought, and it was my impression, that he wanted to retain that \$54,000 for himself, and that I did not think I could get it.

Question. What did you do pursuant to the consultation which you and Stanley had?

Answer. I sent a telegraphic despatch to General Fry.

Question. Who wrote it?

Answer. Stanley wrote it.

Question. Look at that paper. Is that the original despatch he wrote?

Answer. Yes, sir.

Question. From what office was it sent?

Answer. The Astor House.

Question. What followed? What was the result of it?

Answer. The result was, that an order came to Colonel Ilges ordering him to pay that money over to me. It came from General Fry, through Colonel Baker, to Colonel Ilges.

Question. How soon did the order come after your telegram?

Answer. I think the order came that day, and that the despatch that was sent read—

Question. No matter about that. Did you get the money—the \$54,000—or did your firm get it, to your knowledge?

Answer. Yes, I think it was paid to the firm. It was paid to the firm.

Question. In what way? How did Colonel Ilges pay it over?

Answer. He went and drew it. It was not paid that day. It was the next day following the despatch from General Fry. I think there was a second despatch, and that there was a discrepancy in the date of the first order or despatch. The discrepancy was, that General Fry ordered the money to be paid received for recruits enlisted on the 11th, when he ought to have said the 10th; and on that discrepancy Colonel Ilges refused to pay it till another despatch or order came from General Fry correcting the mistake he had made in the former order with regard to the date.

Question. In what way did Colonel Ilges pay it?

Answer. He went and drew it out of the bank.

Question. Do you know whether the check was payable to your firm or not?

Answer. No. He had deposited it in the bank in his own name, and he drew it out of the bank and paid it.

Question. You don't know how this check read?

Answer. No, sir.

Question. At this time, when the money was paid over, had you yet been to Utica?

Answer. No, sir.

The following telegram was then given in evidence:

“MARCH 24, 1865.

“Brigadier General FRY, *Provost Marshal General, Washington, D. C.*:

“I have just returned from Utica, and Colonel Ilges refuses to deliver the money received from me, because your order is dated the 11th instead of the 10th of March. Please answer through Colonel Baker.

“THEODORE ALLEN.”

Question. Why does this despatch say that you had just returned from Utica?

Answer. I had not been to Utica when this despatch was sent. I thought

that there was a chance for General Fry to "beat" me on that money and keep it from me, and I thought I would try and "beat" him if I could, and that I would wait for a few days—time enough to go to Utica—and talk to Stanley about it, which I did, and it was by his advice I sent that despatch on to General Fry, to see whether the money would come or not as he had promised.

Question. Did you accomplish that purpose or not by the despatch?

Answer. Yes, sir.

The following despatch from General Fry to Colonel Baker in answer to the above despatch, dated March 24, 1865, was then given in evidence :

"I have been informed by Theodore Allen, of New York, that Colonel Ilges declines to turn over the money received from the bounty-jumpers as directed by me on the 11th instant. I wish you to see Colonel Ilges and have him turn over this money as directed."

Question. Did you notice that despatch?

Answer. I did.

Question. Do you know whether Colonel Ilges had refused to pay over this money upon an order till there was another one sent on as a letter?

Answer. I think the money was paid the day I left for Utica. I am not positive whether it was paid that day or the day before.

Cross-examined by Mr. RIDDLE :

Question. How long have you lived in New York?

Answer. Twenty-six years.

Question. Is that your age?

Answer. No, sir.

Question. Where were you born?

Answer. I was born at Catskill.

Question. What business did you carry on in New York?

Answer. My trade is a butcher and I worked at the business till 1855?

Question. What other business have you carried on?

Answer. I have driven a cart, I think three or four years.

Question. Well?

Answer. I worked for Mr. Crooke in the dining saloon for three years, I guess, and when I was very small, I worked for Mr. Vanderbilt for two or three years.

Question. What other business have you carried on in New York?

Answer. A bounty broker.

Question. What besides that?

Answer. I kept a public house.

Question. What kind of a public house?

Answer. A drinking saloon, with a little parlor where I kept a little faro.

Question. Where about was it stationed?

Answer. In Green street.

Question. What other business did you carry on?

Answer. Not any.

Question. About how long were you engaged in that saloon?

Answer. I was there in the latter part of 1860.

Question. Did you continue there till you went into the bounty-broking business?

Answer. Yes, with the exception of three months that I was at Fort Lafayette, by order of General Dix.

Question. Is that the only time you have been under arrest?

Answer. No, sir; I have been arrested in connexion with this case.

Question. How many times were you thus arrested?

Answer. Once.

Question. None but once?

Answer. No, sir.

Question. Were you tried in Hoboken, or tried in Trenton last winter?

Answer. No, sir.

Question. Have you been arrested since then?

Answer. No, sir.

Question. Since the disposition of the case at Trenton?

Answer. No, sir; I never have.

Question. Who do you say were your partners in the bounty broker's business?

Answer. Reilley and Hughes.

Question. What was the name of the firm?

Answer. Some of the cards said "Allen, Hughes & Reilley," and others, "Reilley, Hughes & Allen."

Question. Which was correct?

Answer. Either.

Question. Where was your business?

Answer. New York, 25 Chambers street.

Question. What time did you commence that firm, about what time?

Answer. We commenced business in December, I think it was in December, 1864.

Question. Were you running that bank institution down to 1864?

Answer. No, sir; I was in the broker's business, but not in Chambers street, but at Lafayette Hall.

Question. How long were you there?

Answer. About three months.

Question. What year was that?

Answer. I think it was in 1863, I am not sure.

Question. What did you do after that?

Answer. Went to Fort Lafayette.

Question. Did you stay there until you established the bounty broker's business?

Answer. No, sir; I staid there until I established my innocence and was turned out. Of course, I could not establish the business while in Fort Lafayette.

Question. After you did get out of Fort Lafayette, what did you next do?

Answer. I went right into the brokerage business.

Question. Who is Peter Reilly?

Answer. I don't know; he is Peter Reilly.

Question. Do you know anything more about your other partner than you do about Peter Reilly?

Answer. I don't think I ever spoke to him five times in my life before I went into business with him. I had known him several years by reputation as connected with the California ticket agency.

Question. The California ticket agency has been pretty largely done in New York?

Answer. Don't know. I never had anything to do with it myself.

Question. That establishment of Allen, Reilly, & Hughes did a pretty large brokerage business—was recognized as the leading establishment in the city?

Answer. We tried to make it so. I hope it was.

Question. And you were doing a very successful business when Colonel Baker enlisted you in his efforts?

Answer. Yes.

Question. Who first called your attention to the raid upon the bounty-jumpers?

Answer. Colonel Baker.

Question. At what place?

Answer. The first interview I had with him was at Mr. Stanly's office, in Nassau street.

Question. Marcus Tullius Cicero Stanly?

Answer. I don't know, sir; I think his name was Marcus?

Question. Did Stanly have anything to do with your firm?

Answer. No, sir. He was not one of the partners.

Question. Did he have any business connexion with it?

Answer. No, sir.

Question. You first saw Baker at Stanly's office?

Answer. When he first approached me on this subject, I think it was at 86 Nassau street.

Question. When was that?

Answer. I think it was in January, 1865.

Question. What business was carried on in that office at that time?

Answer. I do not know. I was there a great many times and never saw any business done there, except that he did his writing there. That was a place where he was always to be found.

Question. Can you give the time in January when that occurred?

Answer. I think it was about the middle, am not positive.

Question. Was there any arrangement made between Baker and yourself about this business at that time?

Answer. Yes, sir.

Question. State what that arrangement was.

Answer. He simply wanted to know if I would consent to go with him in making a raid on the bounty-jumpers, and in capturing the parties at Brooklyn navy yard who were, as he said, defrauding the government out of an enormous amount of money.

Question. Did you say to him that you knew them generally?

Answer. Oh, yes. I knew a good many of them.

Question. The numbers of bounty-jumpers were very numerous?

Answer. I think they were. I knew them generally as a body. I knew where they were located. If I wanted to see any of them I knew where to go and look for them, although I could not call many of them by name.

Question. There were in connexion with them a large number of bounty brokers doing this business, but doing a less business than yourselves?

Answer. Oh, yes; more offices.

Question. They were all known to you?

Answer. Nearly all of them.

Question. Baker wanted to avail himself of your information—visit these persons for the purpose of having them, by some means that he devised, arrested?

Answer. Yes, sir.

Question. And you consented to enter into the service for that purpose?

Answer. I did not then; I told him I could not give him an answer to place myself in a position where my life was in danger. And I wanted to consult with friends of mine; that I had a good business, and wanted to see enough money coming out of this before I quit it.

Question. At that time was there anything said about embarking not only yourself but your firm in this business?

Answer. Yes.

Question. That was an object to be desired by Baker?

Answer. Yes.

Question. And have the benefit of the services of the firm?

Answer. Yes.

Question. Was it in contemplation to employ any outside of your firm?

Answer. We were to be the principal parties to give him the information. He said there had been efforts made to get at these bogus papers being issued at the Brooklyn navy yard to an enormous amount; and he said that the government had lost a million of dollars during last year from bogus issues of papers, and they would rather allow me to make a million than to go on in

this way for four or five years, as the case might be ; that we should have a *carte blanche*.

Question. At what time after that was the arrangement completed between yourself and associates ?

Answer. My arrangement was wound up that day, and the next day I was to meet him in Washington and see General Fry, but as I had a contract with Peter Cagger and with the committee at Albany, and received a despatch that I was wanted at Albany immediately, I said to Baker that I could not meet him in Washington, but would see him afterwards.

Question. You did not go to Washington that time ?

Answer. No, sir. I saw Baker in a few days after that at the Astor House, in his room.

Question. Was that during the month of January ?

Answer. Yes, sir ; right away, immediately afterwards, within four or five days of the first interview.

Question. Was this arrangement made at that second interview ?

Answer. Well, no ; it was not.

Question. When was it arranged ?

Answer. It was arranged some time after that, because they went right to work then arresting the forged-paper men. I was engaged in that. I was engaged in assisting Baker in getting at the forged enlistment men in Brooklyn.

Question. At what time was there a final arrangement made between yourself and Baker ?

Answer. I think in the latter part of January.

Question. What stipulation, if any, was there as to compensation between yourself and Baker ?

Answer. When making this arrangement I told him I wanted to see how I was to get my money back. The stipulation that I had with Baker was that I should make all that I could, according to the arrangement which I have given you before—according to the whole plan of operation.

Question. Was it not distinctly agreed between Baker and yourself, that neither you nor anybody else was to be permitted to make any money out of this in any shape ?

Answer. I should say it was not. There never was any arrangement of that kind, but there was an arrangement right to the contrary with myself and Hughes and Reilly, right in the presence of Mr. Stanly.

Question. Was there any understanding by which you were to receive compensation from the government direct ?

Answer. No, sir.

Question. Was it expected or intended by that arrangement that where you enlisted bounty-jumpers that bounty was to be paid to them ?

Answer. It was ; to those that were enlisted and let go.

Question. There was established a regular recruiting station on the Jersey side ?

Answer. Yes, sir ; at Hoboken.

Question. And you occasionally recruited a man in good faith ?

Answer. Oh, yes ; very often. Sometimes fifteen or twenty, or as high as thirty, in a day.

Question. Have you any present recollection of how many *bona fide* recruits you did recruit in the whole number ?

Answer. I cannot tell.

Question. Were those that you knew were bounty-jumpers permitted to escape with their bounty ?

Answer. Yes, sir ; those that I knew were bounty-jumpers.

Question. And all those bounty-jumpers were paid up to the time you sprung a certain net ?

Answer. Yes, sir.

Question. How much money did you make upon those *bona fide* recruits?

Answer. Well, on some \$25, on others \$50, and on a "sucker" we would make \$100.

Question. What do you call a "sucker"?

Answer. A country broker.

Question. Then you skinned these countrymen when you got hold of them?

Answer. No, only we looked out that they did not skin us.

Question. From what set of men did you expect to get your money back? From what source was to be your harvest?

Answer. From the very credits of the very men that we paid our money out on, when those credits were given.

Question. Was it not declared to you by Colonel Baker, and so understood by you, that the bounty-jumpers were not to be credited?

Answer. No, sir. I did not care anyhow what Colonel Baker said so long as I had the order of General Fry.

Question. Did Colonel Baker say anything to you about crediting bounty-jumpers?

Answer. I spoke about that to Mr. Baker in the presence of Mr. Stanly, and Mr. Reilly, and Mr. Hughes. I told him that I expected he would get an order issued from General Fry to have these men credited. I told him I wanted the order issued because that Colonel Ilges wanted every one of these men to receive their money when they were mustered in, as that was the rule before on all other recruits; and that if these men were all to be paid, we had not enough money to pay them. He thought the best way would be to muster them in and pay them, and when they were taken up stairs that he would take the money away and send it down to us, so we could pay the next five with the same money, and so on.

Question. Was it said to you by Colonel Baker that the bounty-jumpers who were finally arrested and punished as deserters, and were not sent to the front as soldiers, could not be credited anywhere?

Answer. When Baker came to get into hot water he said he did not see how it could be done, but if General Fry said it could, of course he had nothing to say about it.

Question. He did inform you that it was his intention to break up the bounty-jumping, and punish all bounty-jumpers?

Answer. Yes, that was his intention.

Question. There were one hundred and eighty-six seized in one day, and sent to the front?

Answer. No, for Fort Lafayette.

Question. Then you did break up bounty-jumping there?

Answer. Yes. You could not get a man to move after that. They would always say it was one of Allen's "guts," or "walk away."

Question. The meaning of the term "gut" is the vulgar term for "walk away?"

Answer. Yes.

Question. Now, up to this time, how much money had you advanced on account of bounties, to brokers or to anybody else?

Answer. I could not tell you. I was not treasurer of our firm. I never once looked over the books.

Question. For the *bona fide* recruits you did receive credits, and was paid for those credits?

Answer. Yes, sir.

Question. Now, upon what branch of this business were you out of pocket?

Answer. I borrowed \$40,000 to commence paying bounties because we had not sold the credits. We had contracts with the authorities of Hoboken, but

their contract was only for \$650 to the man, and we thought we could get \$700. On the last day, when the raid was made, our intention was to let Hoboken have these men and take the Hoboken bonds.

Question. Did you expect those bounty-jumpers of that last day were to be credited anywhere?

Answer. To be sure. That was my agreement.

Question. Were you expected to retain the money?

Answer. I did not expect to pay it to the bounty-jumpers.

Question. You expected to retain in your own hands the whole sum of the bounty for them?

Answer. All except the expenses,

Question. And it was from that source that you expected to realize your money for going into these arrangements?

Answer. Yes, sir.

Question. At what time did you have your first interview with General Fry?

Answer. I am not sure, but think it was about the 28th of February.

Question. How many interviews did you have with Fry?

Answer. Two; one on the 28th of February and one on the 18th of March, both at the bureau at the War Department, Washington.

Question. What was the whole amount of money realized from the service?

Answer. I do not know, sir.

Question. State to the best of your recollection?

Answer. Could not tell anywhere near how much it was.

Question. Was it \$126,000?

Answer. Do you mean the money that was made after the expenses were paid of all this business in Hoboken?

By Mr. RIDDLE:

Question. How much did you get out of the whole transaction?

Answer. I could not tell to save my life, accurately, for a reason which I will explain. I think out of the Hoboken arrangement, \$25,000. May be not so much. This I mean as my share.

Question. What portion of this did you get for your share?

Answer. I do not know how much I did receive exactly, as the accounts were all for this and our other business.

Question. To the best of your judgment?

Answer. Well, the business expenses of the offices in Chambers and State streets, in New York, were all paid out of the Hoboken office. The business was all continued right along, and we never had a settlement of the Hoboken enterprise until it was settled in connexion with our other business.

Question. How much did you receive from the mayor of Jersey City?

Answer. \$126,000, I believe.

Question. I will inquire of you whether, in your knowledge, the mayor of Jersey City paid to you the money for these men before any order was made crediting that city?

Answer. When I spoke of an order I meant not the order of General Fry. I meant the order of Colonel Ilges; that when a man was mustered and he came to pay him, he had to go to the provost marshal to whom the order had been issued to receive Colonel Ilges's credits; and when Mayor Cleveland asked me what guarantee I had, I said I did not want him to take any of these men nor pay any money on my guarantee, I referred him to Colonel Baker at the Astor House, and he would satisfy him whether it was right for him to pay the money, and then he could come over again; but until that was done I did not want him to do it, for there was something about it that I could not give him to understand.

Question. Was the money paid the firm before the credits were given?

Answer. \$66,000 were paid. He deposited the money with Reilly, and took the credits from Ilges and went to the provost marshal's office and asked the provost marshal to give him the credits to see whether they were right or not.

Question. At what time was that?

Answer. It was the 12th of March.

Question. After the "blow out"?

Answer. Yes, the blow out was on the 10th.

Question. Do you call the certificates of enlistments credits?

Answer. Yes, or certificates of muster.

Question. Who was this provost marshal?

Answer. Captain Mills, of Newark.

Question. Do you mean to say that he took certificates of muster at that time, or merely the names of men that he expected would be mustered?

Answer. He took from Colonel Ilges a paper with the names of these recruits upon it, certified to on the bottom by Colonel Ilges, that such recruits were duly mustered into service on such a day; but before they were credited they had to go to Captain Mills, at Newark.

Question. Did they ever go to the provost marshal of the division?

Answer. I do not know where they had to go.

Question. Did you say the mayor of Jersey City paid you the money for these men before they were credited?

Answer. I said before he took this muster-roll to Mills, not before he received it from Colonel Ilges.

Question. And you state you do not know how much of that money you ever got?

Answer. No, sir.

Question. Was that ever divided between yourself and partners?

Answer. Yes, sir.

Question. And you don't know what portion you got?

Answer. No, sir; not accurately.

Question. Was that money divided between three, four, or five?

Answer. Between six or seven.

Question. Did you take one sixth or one seventh?

Answer. No, sir.

Question. What proportion did you take?

Answer. I did not look at the books. I could not tell the amount I got.

Question. Were you ever called upon to refund that money paid to you by Jersey City.

Answer. Yes, sir, I was.

Question. By whom, and when?

Answer. I was called upon by the bounty-jumpers to pay them; by Mayor Cleveland to pay him; by Colonel Baker to pay him or General Fry. All these demands were made of me at once. I had all these claimants, and I thought I had better take care of it myself. I hid it.

Question. Where did you go with it?

Answer. I don't know as I went anywhere with it.

Question. Did you go out of the country to avoid arrest?

Answer. Yes, sir; arrests from all quarters.

Question. Where did you go to, and how long were you gone?

Answer. I went to Canada, and was gone four or five months.

Question. Did Stanly go out of the country?

Answer. I do not know, sir.

Question. What time did you return?

Answer. I could not tell you. I came several times. I came all the way to Boston four times to get my tea.

Question. What has become of your portion of the money?

Answer. I could not tell you, sir, as to that identical money.

Question. You spoke in reference to Colonel Ilges having stopped \$54,000 in transitu. What day was that?

Answer. It was between the 11th and 14th of March.

Question. If you have any means by which you can testify the exact date, I wish you would do so.

Answer. I could not.

Question. Do you remember any papers that were executed at that time that would bear the date?

Answer. Yes, there was, that would bear that exact date. There is a receipt which I signed, for the money taken, to Mayor Cleveland. I think that is the day the money is taken; am not sure.

Question. Was that \$54,000 the whole sum that was being paid?

Answer. No, sir; I think not.

Question. It was part of a larger sum, the balance of which was permitted to go to your treasurer?

Answer. Yes, sir.

Question. For what purpose did Colonel Ilges claim the right to stop the other?

Answer. He told me that he had the right to hold that money as \$300 apiece for each recruit mustered in that day, according to the orders of the War Department, of which he had not received any contrary orders at that time.

Question. What was the sum covered by the receipt you signed?

Answer. I do not know.

Question. Was that receipt signed by yourself for the firm?

Answer. No, sir.

Question. How did you sign the receipt?

Answer. I think all three signed it.

Question. Did you always sign receipts for other money that was paid?

Answer. I think not. I think the other receipts were signed by Reilly for the firm.

Question. Do you remember on how many different occasions the money was received by you?

Answer. I only recollect once. Mayor Cleveland generally did the business with Reilly. I only know to my own certain knowledge of the money passing once.

Question. Do you know whether you went to Washington the first time at the suggestion of Colonel Baker?

Answer. I could not say as to the first time, whether Baker asked me to come to Washington or Stanley—whether Stanley told me I had better go to Washington and see General Fry before I went any further in the matter.

Question. At what time of day did you have that first interview with General Fry?

Answer. It must have been after 12 o'clock.

Question. Did you carry any letter of introduction?

Answer. No, sir.

Question. How long did the interview last?

Answer. A half or three-quarters of an hour.

Question. What did you say to him when you came in there?

Answer. I sent up my card first, and then went up and introduced myself to him. He opened the business. Said he, "I suppose you are the Allen referred to by Colonel Baker;" that he had heard Colonel Baker speak of me. He asked me what I thought of the project as detailed by Baker, and would like me to tell him what it was, to see if it tallied with what Colonel Baker had said of the operation that was to be worked out at Hoboken. I went over the ground, and told him that I thought it best to open a recruiting office at Hoboken, and that we had hired such an office in Hoboken, and that it was our object to have a

mustering officer appointed there; that I thought Colonel Ilges was the best man, as he had been in our office in Chambers street, and that we should have a mustering officer appointed in Hoboken to muster these men in, because it was a better place than New York, as the men were afraid to enlist in New York; and that our object was to enlist four or five of the most noted bounty-jumpers every day, and let them get their bounty, and that when the grand haul was to be made that that would be an inducement for all the bounty-jumpers to come there that day and enlist. He asked me if I thought it would be successful, and how many I thought I could capture. I told him that we could capture a thousand or fifteen hundred. There were other things said in connexion with this, but I cannot give the exact conversation. In speaking of the credits, I said that if we had the mustering officer appointed it would be necessary to make the credits; there should be orders issued to Colonel Ilges, and also to the provost marshal of that district, to have these credits accepted, or else if they were not accepted we could not get any money, and that was the only way to pay me for leaving my business in New York. Fry said that order should be made.

Question. Did you return to New York that night?

Answer. Yes, sir.

Question. Did Colonel Baker know you was going to Washington at that time?

Answer. I think he did.

Question. Did he know it before you came?

Answer. I am not positive. I think he had been advising me to go for a long time; but I have forgotten whether he asked me to go on this particular day, or whether it was on the advice of Mr. Stanley. I am inclined to think it was Stanley, because I had been suspecting Baker, because everybody said that Baker "offered everybody up" that came in contact with him.

Question. Did you report to Baker when you got back?

Answer. No, sir.

Question. Did you have any conversation with him when you returned about your trip to Washington and interview with General Fry?

Answer. Yes, sir, because I wanted to get the credits made. I talked to him about getting the credits made, and I think Stanley talked to him about it.

Question. How soon after you got back to New York did you commence recruiting?

Answer. I think we commenced recruiting there on the second of March.

Question. Had you the machinery all right and ready to go as soon as you got this order?

Answer. Yes. We had been waiting for the mustering officer to be detailed.

Question. When do you say was the date of your second interview with General Fry?

Answer. I think it was about the 18th or 20th of March.

Question. And that invitation came to you through Baker?

Answer. I am not sure whether it did or not. I could not tell whether it was despatched through Baker to me or to me directly.

Question. Do you recollect the date you did receive the invitation?

Answer. Don't remember the day of the month, but think it was about the 18th.

Question. Did you state the time you came to Washington?

Answer. I am not sure.

Question. Did you have a conversation with several about coming to Washington before you came?

Answer. Yes, sir.

Question. Had your confidence in Baker been restored to any degree?

Answer. Yes. I thought I had got a little the best of it. I was more on an even footing.

Question. At what time of the day did you arrive at Washington on your second interview?

Answer. The War Department had just closed when I arrived here.

Question. Did you meet General Fry in the same room where you met him before?

Answer. Yes, sir.

Question. He received you very cordially?

Answer. He did not kick me out. He received me very respectfully.

Question. Did he remember your name?

Answer. Yes, sir. Shook hands with me.

Question. What was the first business he opened to you on that occasion?

Answer. He said he was glad to see me, and said we had not been as successful in the Hoboken matter as we anticipated.

Question. Did you explain to him how your trap had come to blow up?

Answer. Yes, sir.

Question. Who went with you to Washington at that time?

Answer. Not a soul.

Question. Did not Colonel Ilgis accompany you?

Answer. No, sir; I met him here at Willard's.

Question. Did Colonel Ilgis or any other person come with you to the War office?

Answer. No, sir.

Question. Did you say those soldiers that were used as guards were sent from Washington?

Answer. I always thought they were until I came here. They came there at 12 o'clock at night.

Question. Was Colonel Ilgis present in General Fry's room in this interview?

Answer. I think he was in ahead of me when I first came in.

Question. How long did he remain?

Answer. He had some conversation with General Fry, and went out.

Question. Did yourself and Colonel Ilgis and General Fry have some conversation together about this Hoboken matter?

Answer. They might have referred to some point, but I don't recollect.

Question. Don't you know that this matter was talked of between yourself and General Fry and Colonel Ilgis?

Answer. I know it was not. There might have been something said, but I am not certain.

Question. You are not certain whether Colonel Ilgis was present when you came in the room, or whether he came in while you were there?

Answer. I left nobody in the room when I left.

Question. How long were you there?

Answer. Half or three-quarters of an hour.

Question. How do you remember whether General Fry took you from the office where he first received you to another room?

Answer. I cannot tell exactly, but I don't think he did. Yes, he did take me into another room, and requested the clerk to fall back into the other room that we went out of.

Question. Do you state there was no other person present in that room during this conversation?

Answer. I think Ilgis was in there, or came in while I was there, and when he got through with his conversation went out. I am not sure who got there first.

Question. Do you remember whether he talked over, in your presence, the matter of his leave of absence, with General Fry?

Answer. I did not hear him.

Question. Do you know what they were talking about?

Answer. I do not.

Question. Were you there about an hour?

Answer. Yes, very nearly; probably about three-quarters of an hour.

Question. What was the purpose for which you went there?

Answer. To answer a telegraphic dispatch.

Question. You had no other purpose or object in going there?

Answer. None whatever.

Question. Did you make any request of General Fry while there?

Answer. Yes, sir; I asked him to issue an order with reference to the refunding of this money.

Question. Did you go to Washington for that purpose, or come to him to get some order about this money?

Answer. I went in answer to a telegram.

Question. Had you any purpose in the world for going there except upon this invitation?

Answer. That's all.

Question. Now, at what time did you call his attention to this money—this \$54,000 of your money which was in Ilgis's hands?

Answer. I could not tell you.

Question. Was it the first thing you spoke of?

Answer. No, sir.

Question. How did it come up in your conversation?

Answer. I went into the War Department, and General Fry asked me what had become of the money that had been paid. I told him that we had it, and he asked me what we intended to do with it. I told him "keep it, of course." He asked me if Colonel Baker had ever asked me for any part of it. I told him no, but that there were \$54,000 that had been retained by Ilgis and which I claimed, and that Ilgis refused to give it up to me because there was an order issued to all mustering officers to retain \$300 on each recruit that was mustered in, and that he (Colonel Ilgis) would not pay that money unless there was an order issued by General Fry. He said, I will attend to that, but what I wanted to see you most about was to see what you knew in regard to the frauds that are being perpetrated at Utica in the bounty business. I told him I did know something about matters at Utica; that I had talked with a man there by the name of Richardson and a man by the name of Burk, and that I thought I could go there and find out. He said great frauds were being perpetrated there by Captain Crandall, and he wanted to get at them, and that he wanted to connect Roscoe Conkling with those frauds, because he had set himself up as the champion of Crandall. I stated to him that I did not think, from what I knew of it, that Captain Crandall was in it, but that the business in bounty frauds lay with Haddock. He said he did not want evidence against Haddock, he wanted evidence that would point to Crandall, and implicate Conkling at all hazards. That is the exact and precise language.

Question. What reply did you make to that?

Answer. I told him I would go and try.

Question. What further did he say about it?

Answer. He said that in the meantime, while I was at Utica he would telegraph to Colonel Ilgis and have this \$54,000 paid over to me. I said this, that he had better have it paid to the party from whom he received it, because Reilly, one of the members of the firm that claimed the money, was the one who paid it to Ilgis.

Question. This was the second time that General Fry had ever seen you?

Answer. Yes, sir.

Question. Did it not occur to you as rather remarkable that he should broach the idea to you of implicating such a man as Mr. Conkling?

Answer. Well, it did not astonish me; I have seen so much of men.

Question. Have you told all that he said to you at that time about Mr. Conkling and the Utica business?

Answer. He said that Mr. Conkling had set himself up as the champion of Captain Crandall. This was said again, about as I was going to leave. He put his hand on my shoulder and says I don't want you to fail; I want you to use your utmost endeavors to get the information against Captain Crandall, and also be sure and get the information that will connect Roscoe Conkling at all hazards. The conversation ended here. I did not know Mr. Conkling at that time.

Question. Did not General Fry say to you that he was informed that there were large frauds there at Utica, and ask you if you knew anything about them?

Answer. He did. And I told him that I had understood there were frauds perpetrated there, and that, if from what I had heard from Richardson, Burk, and Lawless, when the facts were arrived at, I thought they would point more directly to Haddock than to Crandall.

Question. Did he not in that conversation say to you that he had reports from inspecting officers implicating Captain Crandall, but that Mr. Conkling, a member of Congress, said that those reports were not true, and that he (Fry) desired to ascertain whether they were true or not. Did he make that statement to you in substance?

Answer. No, sir. He did not.

Question. Is not that every single word he used about Mr. Conkling?

Answer. No, sir.

Question. At what time did you first know you were to be required here as a witness?

Answer. The first time was when the subpoena was handed to me, which was last Thursday at two o'clock in the day, and I left at night. I never thought I would be subpoenaed; if I had, I would have been in Canada to day.

Question. Who came on from New York with you?

Answer. The party who subpoenaed me.

Question. Another witness?

Answer. No.

Question. Did you ever meet Mr. Conkling before?

Answer. Yes, sir; at the time I went to Utica.

Question. Have you had any interview with him from that time to the time you came to Washington?

Answer. No, sir; never saw him. Would like to have seen him because I rather liked him.

Question. At what time did you have an interview with him after your arrival here?

Answer. I saw him the morning of my arrival here, Friday.

Question. How long an interview did you have with him then?

Answer. Ten minutes, perhaps.

Question. Where?

Answer. In the street where he resides.

Question. How came you to be up to his residence?

Answer. I went around with the person who subpoenaed me. He wanted to notify Mr. Conkling that the subpoena was served, and wanted to see when I was wanted here.

Question. When was the next time you had an interview with him?

Answer. I saw him here, passing in and out every day.

Question. Did you have any interview with him except that one?

Answer. Yes ; I saw him Friday, here in this committee room.

Question. Did you tell him what you could testify to ?

Answer. Yes ; I told him this case as I knew of it.

Question. Did you tell him of this interview with General Fry ?

Answer. Yes.

Question. Did he have your statement written down by anybody ?

Answer. I do not know.

Question. Was anybody else present ?

Answer. Yes ; three or four.

Question. Who ?

Answer. Mr. Hotchkiss, Mr. Maloy, and others.

Question. How many interviews have you had with Mr. Hotchkiss ?

Answer. Two.

Question. Where was the other one ?

Answer. One was that evening here, and the other was here in the Capitol this morning.

Question. Where were you yesterday ?

Answer. In New York.

Question. For what purpose did you go ?

Answer. Well, I had been away from my wife two nights, and she was sick when I left, and had had a surgical operation performed upon her on the very morning I left to come here, and I went back to see her.

Question. What time did you get back here ?

Answer. Arrived here this morning.

Question. Have you had any interviews with your friend Stanly since you were here ?

Answer. I met him at the hotel.

Question. You talked this case over there.

Answer. No ; can't say we did. The case was referred to, as to what was I doing here, and why did I come back.

Question. Do you know what he is here for ?

Answer. I do not know.

By the CHAIRMAN :

Question. You were at Utica.

Answer. Yes, sir.

Question. Did you take any letters from Colonel Baker ?

Answer. No, sir.

Question. Who did you go to see ?

Answer. I went with a man by the name of Spear, one of Baker's officers, to arrest a man by the name of Richardson, who had been accused of being in bounty frauds, and I knew him and was requested by Colonel Baker and by General Fry to go. Found Richardson at his hotel and attempted to arrest him, and he drew a pistol on Spear.

Question. How long were you gone ?

Answer. I left New York on Saturday night and was back there on Tuesday morning.

Question. Did you go there to give color, as you understood it, to General Fry that you had been to Utica upon this investigation for the purpose of deceiving him ?

Answer. No ; I did not go there to deceive him.

Question. Were you paid for that operation ?

Answer. No, sir ; I never received a cent for it and never put in a bill. They never paid my expenses for going to Utica, nor for the expenses of the Hoboken operation, although our firm paid the whole expenses, including sur-

geon's fees, subsistence of jumpers and guard, rent, &c., &c., and furniture for the building.

By Mr. HOTCHKISS :

Question. You speak about being indicted in New Jersey. Was it in connexion with Baker; was he in the same indictment?

Answer. Yes, sir.

Question. Connected with this Hoboken matter.

Answer. Yes, sir.

Question. Were you tried?

Answer. No; I was discharged without trial.

Question. You were sued only this one time.

Answer. This was the only time.

Question. The thing has all been disposed of by the credits being allowed to Jersey City and the State paying Jersey City.

Answer. That is the way I understand it.

Question. Was this Hoboken business a part of the same business of the firm that you carried on before you set up in Hoboken?

Answer. It was a continuance of our business. The accounts were all settled together, and that is the reason I cannot tell about the profits and receipts from Hoboken separately.

Question. What was it about your being sent to Fort Lafayette?

Answer. I only know that I was seized by a guard of soldiers and my clothes nearly all stripped off from me, and thrown into Fort Lafayette and kept there ninety days, and then thrown out on land, on the opposite side, without ever being told why or wherefore. General Dix once called to see me, and told me that if I would reveal certain things in connexion of the recruiting of General Spinola I should be released. I told him I knew nothing whatever about it.

Question. Were any charges ever preferred against you?

Answer. No, sir.

Question. How long were these bounty jumpers kept in Fort Lafayette?

Answer. Three weeks, and then they were discharged and went at large. They never did go to the front. They waylaid me and fired upon me in my house.

Question. In this conversation, the last with General Fry, did he say to you anything about Mr. Conkling prosecuting the frauds of Haddock?

Answer. He said Mr. Conkling had set himself up as champion for Captain Crandall. He said he did not want any evidence against Haddock; he only wanted it against Crandall.

By Mr. RIDDLE :

Question. What were you arrested for?

(Objected to and objection sustained, as the warrant of indictment must show the cause of arrest.)

Mr. HOTCHKISS. I move to strike from the record the papers which were sent as accompaniments of the letter of General Fry, which was read in the House with his letter to Mr. Blaine; the report of Major Luddington; the letter of Colonel Axtell, which was objected to at the time it was offered on account of his being then present in the room; the letter of Colonel Tracy, which has been proved by Colonel Tracy was written without any knowledge of his own, but on information given him by Major Haddock; the letter of Lieutenant Lott relating to desertions and to the character of men sent from the 21st district; the letter (or whatever it may be called) of Judge Advocate Larner; and then we say, also, that all of these letters which are polite and respectful ordinary business letters, some of them private letters, which have no reference whatever to this matter, or to the interest of anybody concerned in it, and which do

not reflect any light as to any charge which is to be investigated on either side, I submit that they ought not to go on this record; and, for example, a letter from Mr. Conkling, concurred in by many gentlemen, saying that they thought that if the provost marshal there, who has been suddenly superceded without any proceeding, that it was not a wholesome proceeding and did not have a good effect, and that if there were charges against him they should be brought up, that the public might know what he was guilty of; the several letters of Mr. Conkling and others, which we suppose can have nothing to do with this case, and to be productive of no effect except the trouble of printing and publishing immaterial and indifferent matters.

Then as to the early evidence—the evidence of Colonel McQuade—he goes on to say that long ago, during the administration of Captain Richardson, in three or four instances in making vouchers, mistakes were made, vouchers that were made out by clerks and signed by Richardson, and that he did not intend to intimate that Richardson did anything wrong about it. And, then, this evidence of Major Beadle: I wish to say to the committee that I am entirely willing to make the request that the testimony shall not appear upon the record. It is due to Mr. Conkling, however, to say that I do not make this request at his suggestion, but he is entirely content that it be deemed out of the case. It makes nothing against him, and nothing in favor of General Fry, and we are willing it be dispensed with if it be agreeable to other parties.

General JEFFRIES.—I see no reason why it should be stricken out.

Mr. HOTCHKISS.—Then we have discharged our whole duty when we say that we have no objection to Major Beadle's testimony not appearing. We express our willingness that his testimony shall be cancelled.

General JEFFRIES.—Many of these papers that are in evidence have gone in under different branches of the case than the statement which alleges the efforts on the part of Mr. Conkling to prevent the prosecution of frauds. I call attention of the committee to such portions of General Fry's letter, if it is worth while to look into it, as state that there are three points of difference.

The chairman announced the decision of the committee as follows:

The committee will admit into the record and report to the House all the papers from the files of the War Department, or from any bureau thereof, which have been given in evidence in the case, and which accompanied the letter of General Fry to Mr. Blaine, including the letter by Mr. Crandall to Hon. R. Conkling, transmitted to the War Department.

The committee will reserve the right hereafter to determine what ones of the other letters and papers offered in evidence they will retain in the record, and direct Mr. Conkling's counsel to assume in the future management of the case that all the papers now admitted in evidence will remain in evidence and will enter into the record.

The committee will not admit Mr. Conkling to go into evidence of the number of desertions which occurred from those recruited under Mr. Crandall; nor generally into matters as to which no evidence has been offered and admitted against Mr. Conkling, except evidence in regard to the animus of the letter to Mr. Blaine.

MONDAY, *June 11*, 1865.

At the request of Mr. HOTCHKISS, the following-named witness, desiring to leave the city, was examined out of order:

Alex. H. Roberts sworn and examined.

By Mr. HOTCHKISS:

Question. Where do you reside?

Answer. In Utica, New York.

Question. Have you always resided there?

Answer. I was born there, and have always resided there.

Question. Are you the proprietor and chief editor of a daily newspaper published in Utica?

Answer. I am.

Question. Have you a very general and thorough acquaintance in that community?

Answer. I have.

Question. Do you remember the occurrence of a deserter named Hopsin being arrested in '63, in Utica?

Answer. I do.

Question. By whom or by whose authority was he arrested?

Answer. By the authority of the provost marshal.

Question. Under military authority?

Answer. Under military authority.

Question. Do you know whether or not the lawyers on whom the provost marshal would naturally have relied were or were not all absent at that time?

Answer. I remember Mr. Howard coming into my office and stating the fact that the lawyers to whom they were in the habit of going were out of town. I understood they were out of town, and knew that one or two were out of town.

Question. Name them, please.

Answer. I knew personally that Mr. Hunt, Mr. Conkling, and Mr. C. H. Dooley, were absent.

Question. Did you learn whether efforts had been made to procure some counsel to appear in the case?

Answer. I did.

Question. Do you know whether they failed or not?

Answer. I was informed that all the efforts had failed.

Question. Who was the counsel against the government in that proceeding?

Answer. I understood that Mr. Cummins, member of Congress, was present.

Question. Do you happen to know whether or not telegrams were sent to the United States district attorney?

Answer. I was informed that despatches were sent.

Question. Now, passing over much of the details, do you know whether the return of the provost marshal was that he held this man as a prisoner under military authority of the United States?

Answer. I understood that it was so, without having any legal knowledge of it.

Question. Do you know, now, whether or not that return was overruled, and an attachment issued against the provost marshal and put into the hands of the sheriff?

Answer. I so understood at the time.

Question. Was this about the time or just after the time of the July riots in New York?

Answer. It was the same month in which the riots occurred. My impression is it was later in the month.

Question. Do you know whether this case of Hopsin was a selected case, to try the question in the State of New York as to whether the military of the United States had the power to hold deserters?

Answer. It was so understood at the time, and, in fact, it was regarded as a test case, to try the power of the government to hold the man.

Question. Was the sheriff of the county a supporter or opponent of the government?

Answer. He was understood to favor the policy of refusing men to the government.

Question. Was there or was there not public excitement and alarm with reference to a collision resulting between the sheriff and his posse?

Answer. There was a great deal said about the probability of a collision in this very case.

Question. While matters stood in that condition, do you know whether Mr. Conkling returned to the city or not?

Answer. He did.

Question. Do you know whether he was called on to represent what had occurred to the government?

Answer. He was. There was, as I have stated, great interest attached to the case, and many persons applied to Mr. Conkling to engage in the case and maintain the rights of the government. Finally, after consultation, a despatch was sent by Mr. Conkling to the War Department, stating the case as it was and asking that the government should take some action in it—laying, in fact, the case before the government for action.

Question. Do you know that Mr. Conkling appeared as counsel for the government?

Answer. I knew the despatch to be received by him.

Question. Was the case subsequently heard on application for rehearing and further argument?

Answer. If that is the technical expression it was heard before Judge Baker.

Question. Do you know whether it was a hearing of length and of importance or not?

Answer. It was of considerable length and able arguments on both sides.

Question. Do you know whether the provost marshal and the government were sustained or not?

Answer. The government was sustained; Judge Baker giving his decision which was received with a great deal of attention at the time.

Question. Do you know whether the case was carried to the supreme court or not?

Answer. I understood it was.

Question. Was it ever reversed to your knowledge?

Answer. I understand not. I know that they have always been held since.

Question. Have you read the letter of General Fry?

Answer. I have.

Question. Were you familiar with all the facts and circumstances connected with that Hopsin case?

Answer. I was.

Question. I call your attention to this language in General Fry's letter: "In the summer of 1863, Mr. Conkling made a case for himself by telegraphing to the War Department that the provost marshal of his district required legal advice, which he was thereupon empowered to give." State whether there were any facts, to your knowledge, justifying or upholding that statement.

Answer. I knew of none; on the contrary, having been familiar with the circumstances of the case, I understood that the provost marshal and the citizens, regarding the importance of the case, urged the proceeding on the government and afterwards asked Mr. Conkling to undertake the duty which the government called on him to perform.

Question. Do you remember the suspension from duty of Provost Marshal Richardson?

Answer. I do.

Question. Did you understand that, just prior to Richardson's removal, Major Haddock had been in Utica privately in consultation with Mr. Smith?

Answer. I did understand that to be a fact.

(Objected to, and objection overruled.)

Question. Will you state whether there was or was not general dissatisfaction at Mr. Richardson being removed?

Answer. There was dissatisfaction on the part of a great many persons because he was removed, as was understood, without any charges against him.

Question. On whose representation; by whom?

Answer. On the representation of Major Haddock.

Question. Did you join with others in addressing a letter on the subject?

Answer. I did join in such a letter.

Question. A letter addressed to the President?

Answer. Yes, to the President; and Mr. Conkling joined in this letter.

Question. Will you mention who else joined in it?

Answer. Judge Baker, judge of the superior court, Mr. Clarke, Mr. Walker, United States revenue collector, and Charles H. Hodgkiss and others.

Question. Will you state to the committee whether these citizens were or were not citizens of high character?

Answer. With the exception of myself, of whom I will say nothing, all the other gentlemen are of high standing.

Question. Was this letter signed by the most honored of our citizens?

Answer. It was.

Question. Was there, to your knowledge or information, any motive on the part of Mr. Conkling, or any other man connected with it, except to have an investigation and a hearing of any charges upon which Mr. Richardson had been removed, if there were any charges?

Answer. The only object was to have justice done Mr. Richardson and the district.

Question. Were you familiar with the whole matter, as it stood, of the suspension of Mr. Richardson; did you look into it?

Answer. I was not familiar with the suspension till the order came; but afterwards I made considerable inquiry as to his conduct.

Question. Did Major Haddock or General Fry furnish any explanation, to your knowledge, to the public or to Mr. Richardson of the grounds on which he was removed?

Answer. I never knew of any.

Question. Did the efforts to obtain light on that subject fail or succeed?

Answer. I never knew of any.

Question. Will you look at this certified copy and state whether it appears that this letter to which you have referred was referred to the Bureau of the Provost Marshal General.

Answer. It bears the date of the Provost Marshal General's Bureau, and certificate of a true copy.

Question. Was there any connexion, to your knowledge, of any kind between Mr. Conkling and the provost marshal, Richardson?

Answer. Nothing more than his connexion with any other citizen. I never knew of any; never heard of any.

Question. Were you familiar with the circumstances attending the appointment of Captain Crandall as provost marshal of that district?

Answer. I was.

Question. Will you state whether a letter was handed to you, and if so, by whom, from General Fry, requesting Mr. Conkling to recommend some one as provost marshal?

Answer. I don't recollect the distinct time of the letter. I was informed at the time that Mr. Conklin had been asked to recommend a person for the office of provost marshal.

Question. Will you state what was done, and whether Mr. Conkling had anything to do with the recommendation of Captain Crandall?

Answer. He called the attention of several gentlemen of the district to the fact that a provost was to be appointed, and stated his disinclination to suggest any one, but that he would forward any recommendation that a number of gentlemen would make, naming some of the most prominent Union men of the

district—Judge Baker, Judge Hunt, and a number of other persons, in addition to myself. There was considerable consultation, and several names were mentioned among these gentlemen on their consultation, and finally they agreed on a letter of recommendation for Captain Crandall, the desire of the gentlemen being to obtain a person thoroughly honest, and recommended as such by the community.

Question. And was Captain Crandall selected on these grounds?

Answer. On the grounds of his integrity and high personal character.

Question. I wish to inquire of you whether you have known him for many years?

Answer. For a great many years.

Question. And whether you have been for many years a resident of that district?

Answer. Yes, sir.

Question. Do you know his character well?

Answer. Very well.

Question. Will you state to the committee what his character has been and is?

Answer. I have always regarded Captain Crandall as one of the few men whose character is not only pure, but is recognized to be such by friend and foe.

Question. Have you ever heard any aspersions on his character?

Answer. Never. On the contrary, since his removal I have heard commendations of his personal honesty; and by personal I mean his official character—private and official.

Question. Was Captain Crandall also removed?

Answer. I understood he was first suspended, and afterwards discharged from duty; the first act was suspension.

Question. Any reason assigned for it that you knew of at the time?

Answer. I don't know whether there was or not.

Question. During Captain Crandall's administration, will you state whether or not he frequently or constantly consulted you as a friend with reference to his troubles or perplexities?

Answer. He did frequently—very frequently.

Question. Did he show you a private letter, brought to him by the bounty broker Richardson, from Major Haddock?

Answer. He did.

Question. How early was your attention directed by Captain Crandall to the question of Major Haddock's integrity?

Answer. Soon after Captain Crandall entered on his duties; very early in February, 1865.

Question. Among other things, did he show you a letter which Mr. Richardson brought, as alleged, from Major Haddock, with reference to the mustering of men with small bounties and without any bounty?

Answer. He did.

Question. Will you state whether or not, after examining the papers and hearing the facts, you advised Captain Crandall as to his duty in mustering in men for less than the highest bounty?

Answer. I advised him that he could not do otherwise than continue the course of conduct which Major Haddock had pursued, in mustering in men at these small bounties.

Question. On the facts, as you understood them from the papers and returns that were shown to you, was there anything for Captain Crandall to do except to muster the men in?

Answer. I supposed he could not do otherwise; I stated it to him at the time.

Question. Did he consult you with regard to the propriety of giving up to Haddock or his broker, Richardson, twenty thousand dollar bonds which he held from him?

Answer. He did.

Question. And also as to the propriety of giving them up on other orders?

Answer. He did.

Question. And did you advise him what to do?

Answer. I told him there were legal points involved in the matter, concerning which I did not feel competent to make a suggestion. I told him to take counsel's advice, and act in accordance with the instructions which counsel would give him.

Question. Do you know who the counsel was?

Answer. The firm of Ward & Hunt.

Question. Will you state the character of Judge Hunt?

Answer. He has recently been elevated to the court of appeal, and he is, in all respects, a man of high standing, and is understood to be at the head of the bar.

Question. Do you know whether Judge Hunt advised Captain Crandall to hand over these bonds or not?

Answer. I knew at the time that Judge Hunt advised him to retain the bonds.

Question. Did you and others join in a letter of which I now show you a copy?

Answer. Certainly, I did join in a letter, of which this is a copy, signed by myself and others, and addressed to "C. A. Daynor," dated "Utica, New York, March 13, 1865."

Question. Does it show whether it was referred to the Provost Marshal General's Bureau?

Answer. There are the words: "Provost Marshal General's Bureau. A true copy."

(Letter, dated "Utica, New York, March 13, 1865," here read in evidence.)

Question. Are the signers of that letter men of high character?

Answer. They are, with the exception of myself, of whom I say nothing.

Question. You say Captain Crandall was appointed on Mr. Conkling's recommendation, after full and deliberate consultation. Will you state whether Mr. Conkling had anything to do with the selection of Captain Crandall?

Answer. Captain Crandall was selected by the gentlemen whose names I have already given, and Mr. Conkling signed afterwards that recommendation, with his endorsement of approval.

Question. Had he anything further to do with it?

Answer. No; on the contrary he hesitated, and declined to make any suggestions as to the person who was to be appointed.

Question. Will you state whether Captain Crandall was asked to deliver the twenty thousand dollars of bonds; and if he offered to give them up, if the government would instruct him?

Answer. He did; I understood so.

Question. Was this bounty broker Richardson ever brought to your notice?

Answer. He was; and I would like to state how: My first knowledge of him was by his coming into my office to respond to a paragraph which I had printed, condemning his conduct in the manner of enlisting men.

Question. He came to complain?

Answer. Yes, to complain.

Question. Did you at any time state to this man that discoveries and punishments would take place of those, whoever they were, who were engaged in recruiting frauds?

Answer. I did.

Question. Did that lead him, or did he on that occasion give any intimation to you of his being able to make disclosures?

Answer. On that and other occasions he stated to me facts which led me to feel certain that there were gross wrongs in progress, and I attempted to terrify him by this statement that the government would certainly punish somebody for these wrongs, and that persons in authority, if guilty at all, were much more

guilty than those who were not in authority; that besides, persons not holding official situations were at the mercy of those who did, and that I felt confident that he was guilty, and that it would be for his advantage to let the government understand the truth. Besides, it was a matter of justice that persons in official position should be punished. He gave me facts which confirmed my suspicions of wrong, and which I substantially gave to Mr. Conkling.

Question. For what purpose?

Answer. I stated these facts to Mr. Conkling to secure for Richardson the amount which he required in order to go forward with these statements, and primarily to protect the government against the wrongs which were in progress.

Question. Do you know whether Mr. Conkling did communicate to the War Department that there was such a man?

Answer. Yes, sir; I understood that he applied for the immunity which I assured Richardson he should have.

Question. Was there any reason, to your knowledge, for dealing with Richardson, except to elicit from him facts in aid of the government?

Answer. Not the slightest.

Question. Where was Richardson's residence?

Answer. He was always spoken of in Utica as being an Albany man.

Question. Do you know or have you any knowledge regarding your own action in requesting Mr. Conkling to undertake the prosecution of Major Haddock by the government?

Answer. I know that I urged him repeatedly that it was a matter of duty—a matter essential almost to the existence of the government—that Major Haddock should be prosecuted. I urged him to undertake the duty. I spoke with others and told them that they should see him and urge him alike in the case.

Question. Do you happen to know whether Mr. Conkling was anxious to undertake the prosecution of Major Haddock or not?

Answer. I know he said he was unwilling to do it, and I also know that it was a matter of complaint on the part of some of his friends that he was so unwilling to undertake what some of us thought an imperative duty.

Question. Will you state in your own way what Mr. Conkling's business was; what his activity was in his profession?

Answer. We all understood that he had as much law business as he could do, and that he had his selections of the most profitable and desirable cases.

Question. Are you able to state whether the prosecution of Major Haddock was or was not a sacrifice?

Answer. From my knowledge of his business I had no question that it was a pecuniary sacrifice to him, notwithstanding the sum paid by the government.

Question. Do you know in all you saw and observed of Major Crandall's administration, of his doing any act which involved blame on his part?

Answer. I do not. I think he is one of the most conscientious men I ever saw in his situation.

Cross-examined by Gen. JEFFRIES:

Question. You say that this Richardson was, as you understood, a resident of Albany; how long or how early in the course of his recruiting business were you aware he was concerned in putting in recruits at Utica?

Answer. Some time before the call of December, 1864.

Question. He did large business in that way?

Answer. Yes, sir.

Question. More than all the others put together?

Answer. So I understood.

Question. He rarely fell under the censure of honest men?

Answer. My own knowledge of him commenced about December, and my knowledge concerning him commenced by reason of complaints of his conduct.

Question. Was he not employed by some of the sub-districts, towns, or wards to fill this quota of that very requisition of which you speak?

Answer. I cannot speak with positiveness. There was a proposition which he made to fill the entire call; but I cannot name any districts in which he did fill it; that is, which he was employed to fill. Yet my impression is that he was employed.

Question. Did he not fill three-fourths of that quota?

Answer. I am not able to state.

Question. You were familiar with the matter and had personal knowledge of most of these matters?

Answer. Certainly. If you allow me to state. I understood that the board of supervisors would make arrangements to fill their quota, which was made like a contract with Richardson. In a great many cases the men came through Richardson, but, as I understood, the law authorities did not make any contract with him.

Question. Richardson was also in daily communication in the office, having rather extraordinary facilities for transacting business?

Answer. I don't think I was in the office more than three or four times; therefore I am not able to answer that.

Question. Don't you know that Richardson had unusual facilities in the office, and that that was a matter of complaint?

Answer. I know that he furnished a considerable number of men, but a great many of them through third parties.

Question. Does your answer refer to the orders which he brought from Major Haddock giving these facilities, or to that particular time?

Answer. I understood there were complaints made with reference to him.

Question. These orders from Major Haddock, were they in the nature of orders from Major Haddock, or in the nature of requests in reference to Richardson?

Answer. The most of them I understood to be in the nature of orders. I think there was a letter to Richardson which was not an order.

Question. He showed you the private letter from Major Haddock with regard to Richardson?

Answer. Yes, sir; that is, he showed me a letter which came by private hand—brought by Richardson—in the nature of orders. They were private orders that came by the hand of Richardson.

Question. Did Captain Crandall obey these orders—do these things?

Answer. There were several classes of these orders; one referred to mustering in men for small bounties, and the other orders I understood Captain Crandall to carry out. The orders with regard to the bounties he did not obey. I understood that this order to muster in the men was to facilitate the business of Richardson; that order Captain Crandall obeyed.

Question. It was found that that order was detrimental to recruiting, was it not? Did not Conkling write a letter that it should be modified?

Answer. I do not remember that Mr. Conkling ever wrote a letter asking that it should be modified. As to its effects on recruiting, my recollection is this, that it served to increase the number of men taken, while it may have had, to some extent, the effect to lead to a deterioration in their character.

Question. I understood you to say that this information which you had concerning Major Haddock and Judge Smith reached you in the shape of information from other persons.

Answer. Yes, sir; I did not see him at all.

Question. Do you know as a fact that Major Haddock was there at the time you supposed he was in Utica?

Answer. No; I did not.

Question. Did any other person tell you he saw him there; if so, who?

Answer. I can't state that any person at the time told me he was there. I was reading yesterday the evidence of the court-martial as to that fact, and I speak with more confidence than if, perhaps, I had not read that evidence.

Question. At what time was Mr. Conkling asked by his fellow-citizens to undertake the prosecution of Major Haddock?

Answer. Very soon after Mr. Crandall became provost marshal my suspicion existed with respect to Major Haddock; and certainly before Captain Crandall was removed I stated to Mr. Conkling the importance of prosecuting Major Haddock, because we were losing men and money, and recruiting would be soon broken down.

Question. Do you know whether Mr. Conkling held communication with the War Department respecting the prosecution of Major Haddock by letter, telegraph, or otherwise?

Answer. I understood that he did; that he communicated with the War Department with reference to the immunity to Richardson and the information which had been procured regarding Major Haddock.

Question. Do you know whether at any time after January, 1865, that there were sent forward from Utica, either prepared by Mr. Conkling or others, any general statement of what was supposed to be the facts of the condition of recruiting there?

Answer. Yes, sir; the letters appear in evidence here.

Question. Was there anything beyond the letters which have appeared here?

Answer. I do not remember anything beyond the letters which have appeared here.

Question. You are the political friend of Mr. Conkling?

Answer. Yes, sir.

Question. And have been since his political career?

Answer. Yes, sir.

Question. So far as you permit your paper to be the organ of anybody, you represent his interest in your paper?

Answer. My paper represents my own interests, and nobody else's interests. I can only say I regard Mr. Conkling as a personal friend.

Re-direct examination by Mr. HOTCHKISS:

Question. Is Richardson, the bounty broker, and P. Richardson, who was once provost marshal, in any way related to each other?

Answer. On the contrary, I heard the connexion denied by both persons.

Question. You say you rarely went to the provost marshal's office, and that Captain Crandall came to your office?

Answer. Yes, very frequently. Sometimes more than once a day, and there were seldom days when he did not come.

Question. I wish to call your attention to a word in this letter of General Fry, which was omitted, "whether he received, as it had been reported, from this district five thousand dollars more for the same service, and whether he received additional fees for opposing the proceedings at Utica, I am unable now to say." Do you know whether he ever received any sum from the district for that matter?

Answer. I never heard of his receiving any. I am certain he never received any sum.

Question. The district consists of Oneida county?

Answer. Yes.

Question. Is that county represented by anybody except the board of supervisors?

Answer. No, not that I am aware of.

Question. Could such a thing happen without its being among the papers of the board?

Answer. I know no other way, except through the board of supervisors, that such a thing could have happened.

Question. Are the proceedings of that board published under an order of the State annually?

Answer. They are published; but whether in compliance with a statute or not I don't know.

Question. Do you know that there is a statute that makes them admissible in all courts?

Answer. I know that the statement of accounts is published by law.

Question. Is that statement, so far as your knowledge goes, in any degree or respect founded on truth?

Answer. I know of no truth in it whatever.

Question. And could such a thing, in your belief, have happened in any way without your knowledge?

Answer. I am familiar with the proceedings of the board of supervisors, and know generally as to all large sums of money, and no such appropriation has been made to my knowledge. I am confident I would have known it had it been made.

By the CHAIRMAN :

Question. Was there any rumor that he received that money?

Answer. I never heard of such a rumor till I read General Fry's letter.

Question. Was there ever any complaint that Mr. Conkling had been instrumental in suppressing any prosecutions that the public or any official asked for?

Answer. I never heard the complaint made, or the charge intimated in any form, till I saw the letter of General Fry.

By Mr. HOTCHKISS :

Question. Who was Richardson's clerk in this matter of recruiting?

Answer. John D. Collins.

Letter from Major Haddock to Colonel Poole, dated January 9, handed to the witness.

Question. Is that one of the papers that Captain Crandall showed you from Major Haddock?

Answer. It is.

Question. Did Captain Crandall show you a letter from Major Haddock to Colonel Poole, dated January 10, 1865?

Answer. He did.

Question. Did this passage occur in that letter : ?

"The provost marshal should take pains to inquire fully into bargains made with recruits and substitutes, and hold both parties to a strict performance of their agreements, not forgetting that recruiting agents have rights that should be respected, as well as recruits or substitutes."

Answer. Yes, sir; the last clause enables me to identify the letter.

Question. Did he show you a letter from Major Haddock to himself, dated January 30, 1865?

Answer. He did.

Question. Brought to Crandall by whom?

Answer. By Aaron Richardson.

The following is the letter :

ELMIRA, N. Y., January 30, 1865.

CAPTAIN : From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men are very

valuable in putting in men, as his acquaintance is very extensive, and his resources many. I hope you will grant him all reasonable indulgence. He is a man of property and can back up his statements.

Very respectfully, your obedient servant,

JOHN A. HADDOCK,

Major and Acting Assistant Provost Marshal General.

Captain CRANDALL, *Provost Marshal, Utica, N. Y.*

Question. Did he show you a letter to him, (Crandall,) dated February 6, 1865?

Answer. He did.

I read this extract: "If the men, however, agreed to go for \$50 each, there can be no just cause of complaint. It would probably be much better for the service if the men would volunteer to go for *no money at all*, but influenced by patriotic motives."

"Very respectfully, &c.,

"JOHN A. HADDOCK, *Major, &c., &c.*"

Question. Was that letter received after Captain Crandall had mustered several men for small bounty?

Answer. Yes, sir; after he had mustered in seventeen men for small bounty.

I read this paper in evidence, which appeared in the Haddock trial:

HEADQUARTERS ACTING ASSISTANT PROVOST MARSHAL GENERAL,

AND SUP'T VOL. RECRUITING SERVICE, WESTERN DIVISION, N. Y.,

Elmira, January 7, 1865.

CAPTAIN: This will be handed to you by a friend of mine, Mr. A. Richardson. He is a man of integrity and capacity, and will do as he agrees in all things. Any good you may be able to do him will be thankfully appreciated by

JOHN A. HADDOCK,

Major 12th V. R. C., Act. Ass't Prov. Mar. Gen'l Western Division, N. Y.

Captain A. L. SCOTT,

Provost Marshal Twenty-second District, New York, Oswego, N. Y.

I offer in evidence a letter from Major Haddock, dated January 27, 1865, to Aaron Richardson, enclosing to him a quota for the twenty-first district, and a statement of where there were deficiencies in sub-districts, and saying to him, "I would be glad to see you here if consistent with your other business."

I offer in evidence this telegram:

ELMIRA, January 24, 1865.

A. RICHARDSON, *Baggs' Hotel*:

It stands at two thousand and eighty-eight, (2,088.)

JOHN A. HADDOCK.

ELMIRA, January 25, 1865.

A. RICHARDSON, *Baggs' Hotel*:

She was sent you yesterday. Has she come? Do you want another one for the others? I wrote you last night.

JOHN A. HADDOCK.

ELMIRA, January 25, 1865.

CHIEF OPERATOR, *Elmira*:

Will you please ascertain from the Utica office whether the two messages to A. Richardson, sent by me, were received by him. I will pay you if there be any charge.

JOHN A. HADDOCK, *Major, &c.*

I offer an anonymous letter in evidence, which is proved in the Haddock trial to have been written by Major Haddock:

FEBRUARY 6, 1865.

A. RICHARDSON, *Esq*:

MY DEAR SIR: From present appearances, it is quite probable that 25 per cent. of the quota under present call will never be called for, consequently if you have contracts to fill

quotas of sub-districts positively made, great benefit will thereby accrue to you. "Joe" shall be attended to. None of the other counties, save Erie, are in the same condition as Oneida, and I do not think you could get a contract at Buffalo.

Respectfully your friend.

(No signature.)

FEBRUARY 4, 1865.

Mr. A. RICHARDSON, *Baggs's Hotel, Utica, N. Y.*:

When I left you here it was the understanding that I should hear further from you relative to the matter we were conversing upon. Thus far, I have heard nothing.

Very respectfully, your friend.

(No signature.)

Mr. RICHARDSON: Your friend at Elmira desires a personal interview with you at as early a day as is convenient to you, at this place or Canandaigua. He has in his possession certain facts that you should be possessed of.

(No signature.)

ELMIRA, (forwarded from Syracuse,) March 1, 1865.

A. RICHARDSON, *Baggs's Hotel.*:

I did not understand why you were not at Rome, nor do I now understand it. I was here four (4) hours on Friday night. You will be obliged to come here, as I am greatly pressed.

J. A. HADDOCK.

JOHN A. HADDOCK, *Elmira*:

I went to Rome Friday night to meet; sent Collins two (2) hours before; was much disappointed in not seeing you. Where shall I meet you and when?

A. RICHARDSON.

Answer to the above:

MARCH 10, 1865.

J. A. HADDOCK, *Elmira*:

Meet us at Osborne House, Rochester, to-night, without fail.

R. and S.

Question. Do you happen to know, Mr. Roberts, who "R. and S." mean in that despatch?

Answer. I surmise they mean Richardson and Smith.

AVON, March 3, 1865.

A. RICHARDSON, *Baggs's Hotel, Utica*:

Nothing until you come. Have arranged. Have arranged for you Saturday night at Osborne House, Rochester. Home to-night.

JOHN D. COLLINS.

UTICA, March 9, 1865.

JOHN A. HADDOCK, *Elmira*:

Send telegram to Provost Marshal, allowing A. R. to muster men in any place in western division, and pay recruits at mustering office as State law may allow. Meet me at Osborne House, Rochester, Friday night. I will bring documents all right.

G. W. SMITH.

ROME, March 13, 1865.

Major JOHN A. HADDOCK, *Elmira*:

Everything is all right; business prevents my coming to-day; will be on to-morrow; send instructions to new marshal to muster same as before. Send answer by this line to Rome.

G. W. SMITH.

ELMIRA, March 14, 1865.

GEO. W. SMITH, *County Judge*:

I have given directions as requested by you.

JOHN A. HADDOCK.

H. Rep. Com. 93—13

Question. Now, Mr. Roberts, will you state whether among the papers which have been read are some of those that Captain Crandall showed you are from first to last from Major Haddock.

Answer. Some of the papers that have been indicated he showed to me.

By Mr. RIDDLE:

Question. Which of these papers are sworn to?

Answer. The letters from Crandall dated January 30, 1865, that from Haddock to Crandall dated February 6, 1865, and one dated January 10, 1865, from Major Haddock to Colonel Poole.

By Mr. HOTCHKISS:

Question. Were those papers printed in your establishment?

Answer. They were.

Question. Can you state about the time when it was done?

Answer. My recollection is, they were printed immediately after the suspension of Captain Crandall, about the 13th of March.

Question. And were they at that time transmitted to General Fry?

Answer. I understood they were so transmitted.

Mr. Hotchkiss placed in evidence the following paper:

BUREAU OF MILITARY JUSTICE, *August 20, 1865.*

Major John A. Haddock, 12th Veteran Reserve Corps, and acting assistant provost marshal general western department of New York, was tried by general court-martial, of which the first session took place on the 22d of May last, under the following charges:

1. Violation of the ninety-ninth article of war.

The twenty-six specifications under this charge alleged, 1st, receiving a horse and sleigh from a substitute broker as a bribe; 2d, falsely certifying to the good character of one Collins for the purpose of aiding one Richardson, a substitute broker, in his schemes for making money in the furnishing of recruits and substitutes; 3d, for the same purpose writing and privately communicating to said Richardson a letter to the provost marshal of New York, in which certain instructions favorable to the interest of Richardson were given; 4th, receiving a bribe of two thousand dollars from said Richardson; 5th and 6th, giving to said Richardson, to be used by him, a letter addressed to each provost marshal of his division in New York, in which letter those officers were requested to give facilities to said Richardson in his business, and assured of his integrity, and which letters have been nearly all obtained and destroyed by the accused; 7th, endeavoring to procure from Captain Crandall, provost marshal, to be surrendered to said Richardson, bonds to the amount of \$20,000, given by Richardson as security against the desertion of certain men presented by him, and who had deserted; 8th, directing Captain Crandall to forward men without any part of their local bounties, in complicity with and in the interest of said Richardson; 9th, giving similar instructions to many other provost marshals under his command for the same fraudulent purpose, giving said Richardson secret information of the quotas and credits in the various districts of his division, to enable said Richardson to make fraudulent contracts with committees ignorant of said matters; 12th, suppressing, in complicity with said Richardson, facts with reference to quotas and credits, whereby said Richardson was enabled to commit frauds; 13th, agreeing to accept five thousand dollars (\$5,000) from said Richardson as a bribe; 14th, secretly meeting Richardson and others for the purpose of aiding them in the management of their business of brokerage; 15th, ordering Captain Crandall, provost marshal of the 21st district of New York, to muster in men for sub-districts not within said district; 16th, falsely crediting to a certain sub-district in the 21st district men who had not enlisted in said sub-district with the intent to aid one Fiske, a bounty broker, to receive fraudulently large sums for disposing of said credits; 17th and 18th, corruptly agreeing with bounty brokers to furnish them early information and to cause credits to be withheld for a money consideration; 19th, agreeing with Richardson to aid him and share his profits; 20th, the same with one Fiske, bounty broker; 21st, directing Richardson to send him money and presents through a female named Carter his mistress; 22d, improperly and completely placing certain persons, among them said Miss Carter, on his pay-rolls; improperly recommending a disloyal person, his cousin, for the office of special agent; 24th, giving to said Richardson a false and deceptive letter; 25th, advising Major Beadle, provost marshal, to consult with one Smith, a partner of Richardson, in the management of his official business; 26th, combining and confederating with said Smith and others to become pecuniarily interested in the business of recruiting, and to defraud the authorities of certain districts in the western division.

Charge 2. Violation of the eighty-third article of war, conduct unbecoming an officer and a gentleman.

The specifications under this charge are precisely the same as those under charge 1.

Charge 3. Fraud; malfeasance in office; abuse of official powers; complicity with bounty

brokers; accepting presents and bribes; agreeing to accept presents and bribes; being interested pecuniarily in recruiting and filling quotas in the western division of the State of New York.

Same specification as under charge 1.

The court acquitted the accused under the 14th, 15th, 18th, 22d, 23d, and 25th specifications; modified to some extent the 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 20th, and 21st specifications; convicted him, without modification, under the 1st, 2d, 3d, 4th, 16th, 17th, 19th, 24th, and 26th, and under all the charges; and "sentenced him to be cashiered and utterly disabled to have or hold any office or employment in the service of the United States; that he pay a fine of (\$10,000) ten thousand dollars to the United States and be imprisoned at such place as the proper authority may designate until said fine be paid, the period not to exceed five years; and that the crime, name, and place of abode of the said John A. Haddock, to wit, the town of Watertown, New York, and punishment of the said delinquent be published in the newspapers of the State of New York."

The evidence fully sustained the findings of the court. The conduct of the accused in his venality, in connexion with the bounty and substitute brokers engaged in filling the respective quotas of men called for by the government, in his rapacity for the fraudulent accumulation of money, in the immorality of his domestic life, and in his utter abandonment of every principle of honor in the administration of his official duties, is almost without a parallel in the criminal history of the war. It is impossible, nor is it deemed to be necessary, to report minutely and at length the testimony in this very voluminous case of nearly fifteen hundred pages. It demonstrates beyond the possibility of doubt, however, that the accused, while holding the office of acting provost marshal general of the western district of New York, was in the constant receipt of large bribes from substitute and bounty brokers for improper facilities given them for defrauding the districts and counties under his control of moneys raised for the payment of bounties; that illegal gains were pouring in upon his hands in a continuous stream through the measures adopted by him for aiding Richardson and others in the perpetration of criminal acts, the profits of which he largely shared; that his orders for regulating the procurement of men were issued at the instigation of Richardson and other interested persons in obedience to their wishes and under the stimulus of gifts of money; that he frequently furnished this Richardson with secret information upon the condition of the quotas, and similar matters, with suggestions for the latter's better arrangement of method of fraud; that he more than once met Richardson by appointment at places remote from his headquarters for the purpose of consultation; that he strove to throw every obstacle in the way of Richardson's arrest, and that he transacted much of his secret and illegitimate business with those who were engaged with him in plundering the people, through a woman, not his wife, with whom he was living during nearly his whole term of office in almost open concubinage. Some idea may be had of the extent of his illicit gains from the fact established in evidence that in the short space of three months and a half, from December 16, 1864, to April 1, 1865, about which time he was arrested, his private property was increased from \$13,450, which is all it can possibly have amounted to, to \$44,278, at the later date. He was receiving the pay and allowances of major at the time. This, however, can scarcely be believed to cover the whole amount of his receipts, much of which, there is little reason to doubt, has been laid away beyond reach and discovery. At the time of his arrest the government obtained from his possession the sum of \$161,900, consisting of the bounties of one hundred and eighty-one deserters from Camp Seward, and enough has since come into the government hands to make the fund recovered from the accused amount to over \$200,000, much of which should never, by the regulations of the service, have found its way into his possession. The prosecution attempted to show, but the testimony was held inadmissible, that over six hundred men had deserted from this camp. The exclusion of this evidence rendered it impossible to show what had become of the bounties of these four hundred additional deserters.

The degree of turpitude attained by the accused while occupying a position perhaps only second in importance to that of the Provost Marshal General himself in the procurement of men for the enforcement of national authority is such as to cause surprise at the leniency of the sentence pronounced by the court. It is recommended that it be enforced to its full extent.

J. HOLT, *Judge Advocate General.*

The SECRETARY OF WAR.

Mr. HOTCHKISS called the attention of the committee to that part of the record of the Haddock court-martial showing that Richardson was a witness, and showing the materiality and importance of his evidence, and showing that it there fully appeared that the sole intervention by Mr. Conkling on the occasion of the arrest of Mr. Richardson was to inform the officers arresting him that he had made disclosures believed to be valuable to the government, which disclosures had been in part verified, and which had turned out to be true as far as the examination had gone, from which it was believed that he was making truthful disclosures.

The committee here adjourned until next day at 10 a. m.

WEDNESDAY, June 13, 1866.

EDWARD MOLLOY sworn and examined.

By Mr. HOTCHKISS :

Question. Where do you reside ?

Answer. In New York.

Question. For how long have you lived there ?

Answer. For ten years.

Question. Were you in 1865 one of General Baker's staff of detectives ?

Answer. Yes, sir.

Question. From when till when ?

Answer. From the 24th of January till the 8th of May, 1865.

Question. Were you sent, and if so when, to Utica to inspect and scrutinize the doings of Captain Crandall ?

Answer. I was detailed on the 31st day of January to proceed to Utica for that purpose.

Question. By whom were you detailed ?

Answer. By Colonel L. C. Baker.

Question. Was Colonel Baker at that time chief detective special agent of the Provost Marshal General's office ?

Answer. I understood that to be so.

Question. Did you go to Utica ?

Answer. I did, sir.

Question. Did you scrutinize and investigate Captain Crandall's administration ?

Answer. I did, sir. I had orders to learn whatever I could about the administration of Captain Crandall, as well as the *modus operandi* of the bounty-jumping system.

Question. Without going into particulars, I ask you now if you made a report ?

Answer. I did, sir.

Question. Was that report favorable or unfavorable to Captain Crandall ?

Answer. It was favorable in every particular.

(Objected to, and objection overruled.)

Question. Will you state what your report was ?

Answer. I reported to Colonel Baker that on my arrival at Utica I discovered that there were a great many bounty-jumpers and brokers waiting to be mustered into service.

Question. Just state the substance of your report without going into details.

Answer. I made a report to the effect that Captain Crandall had no complicity whatever with the bounty-jumping system, and that if there was any complicity—that is to say, if there was any conniving on the part of any official of that department, that Captain Crandall was not cognizant of that fact.

Question. Did you in that report make any return or statement with regard to Major Haddock ?

Answer. No, sir.

Question. When was that report made to Colonel Baker ?

Answer. On the 3d day of February, 1865.

Question. Were you subsequently detailed to proceed to Elmira and scrutinize the administration of Major Haddock ?

Answer. I was, on the 25th of February, 1865.

Question. Did you go there ?

Answer. I did, sir.

Question. Did you investigate matters there ? State for how long.

Answer. I proceeded to Elmira on the 26th, and arrived on the morning of the 27th of February and put up at the National Hotel. I commenced at once

to make my investigation with regard to the bounty brokers' system and recruiting in general. I assumed the *soubriquet* of a bounty broker, and by that means I had great facilities for detecting frauds which I could not detect otherwise. Some of these brokers thought me to be what I seemed, and disclosed the fact to me that they, in consideration of a certain sum, had special orders, issued by Major Haddock, to muster men in for three hundred dollars, whereas the other brokers had to pay six hundred.

Question. Did they disclose what portion of it went to Major Haddock?

Answer. They disclosed, I think, that he had to receive one-half of it.

Question. Did you make a report of that fact?

Answer. I did, sir; I made a consolidated report, implicating those parties and others. General Baker proceeded to Washington and laid the fact before General Fry, and immediately telegraphed to me to arrest these parties.

Question. You made a report of what you had discovered?

Answer. Yes.

Question. What did General Baker do?

Answer. He telegraphed to me to arrest these parties named Wibell and Dalton. Wibell was keeper of the International Hotel, and was also a bounty broker. Dalton was a constable, and also a bounty broker.

Question. He telegraphed you to arrest these men?

Answer. Yes, sir. I am not positive whether it was a telegram or a letter; but I had orders to arrest these men.

Question. When was it you saw General Baker in New York?

Answer. On the 4th of March.

Question. Was it before or after?

Answer. It was after.

Question. After you delivered your report to Colonel Baker, do you know he went to Washington?

Answer. I know he went a day or two after.

Question. How soon after did he telegraph you to arrest Wibell?

Answer. He telegraphed me to remain.

Question. And you remained at Elmira?

Answer. I did.

Question. Did that order embrace Major Haddock?

Answer. No, sir.

Question. Did you arrest Dalton?

Answer. Yes, sir. And Wibell proceeded to New York and Colonel Baker had him arrested there and held him in the Astor House.

Question. Were other men arrested?

Answer. There were; and I understood they were convicted.

Question. Did these men go to the penitentiary?

Answer. I understood that to be so.

Question. Do you know Theodore Allen?

Answer. I do, sir.

Question. Do you remember, about the 18th of March, 1865, Theodore Allen returning from Washington?

Answer. I recollect something about the circumstance.

Question. Did you meet him, or did he come to you after his return?

Answer. It was usual for us to meet at the rotunda of the Astor House.

Question. Did you meet him after his return from Washington?

Answer. In a few hours afterwards.

Question. Did you have conversation with him?

Answer. Yes, sir.

Question. Did he there state to you what had occurred in Washington?

(Objected to.)

Question. I ask you, then, whether Allen did on that occasion disclose to you what had happened between himself and General Fry, as he said?

Answer. Yes, sir.

(Objected to; objection overruled.)

Question. Will you state whether or not during the two or four days succeeding, you and Allen and others met or not?

Answer. We did; in the rotundo of the Astor House.

Question. Was the Astor House General Baker's headquarters?

Answer. Yes, sir.

Question. Will you state whether you met from day to day on the subject of the business in which Allen was interested?

Answer. We met exclusively for that purpose.

Question. Did you know of the sending of a telegraphic despatch to General Fry on the 24th of March? Do you recollect the consultation which led to the sending of that despatch?

Answer. I recollect a consultation held by three or four for the purpose of adopting the best means to get these fifty-four thousand dollars, and it was decided that the best means of getting it was to send this telegram that you have just recited.

Question. Did you see it sent?

Answer. I saw it handed to the clerk in the telegraph office, but whether it was sent through or not I can't say.

By the CHAIRMAN:

Question. Where did you understand the fifty-four thousand dollars were?

Answer. In the hands of Colonel Ilges. We met daily at the Astor House to see what disposition would be made of this money.

Question. Did it come to your knowledge that a response came from General Fry as to the payment over of that money?

Answer. I heard it on a day or so afterwards, but I did not hear it just on the arrival of the telegram. I heard it from the persons interested—from Allen & Co.

Question. Was it a fact that your attention was called immediately afterwards to the question whether an answer had been received or not?

Answer. Yes, sir.

Question. Did you ever, if you remember, see the despatch which was sent to General Fry, and to refresh your recollection I will show you a certified copy of it. (Copy shown to witness.)

Answer. I never saw that letter, but I heard the substance of it repeated.

Question. How soon, if you remember, was this despatch delivered pursuant to the consultation?

Answer. A few days afterwards. I can't say as to the precise time.

Cross-examined by Mr. RIDDLE:

Question. How came you to be concerned with Allen and Stanly in trying to recover these twenty-four thousand dollars?

Answer. I was not concerned in it at all.

Question. Why were you in consultation?

Answer. I knew them for a number of years, and through that means I was in consultation with them.

Question. You were in Colonel Baker's employment at that time?

Answer. Yes, sir.

Question. Did you make known to Colonel Baker what these fellows were driving at?

Answer. I did not know that it was my duty to do it.

Question. When did they disclose the fact to him?

Answer. I don't know.

Question. Do you know that they did?

Answer. I can't say positively.

Question. Then it is not true they disclosed it to him.

Answer. Well, I thought Colonel Baker knew it.

Question. What made you think Colonel Baker knew it?

Answer. I saw the men in consultation with Colonel Baker often, but what about I can't say.

Question. Then it is from that you infer they told him this?

Answer. I never knew they told Colonel Baker. I knew they had a great deal of conversation about the disposition that was to be made of the money, and I thought they disclosed this fact as well as the others.

Question. Had you any other information on that matter except what you disclosed?

Answer. Nothing but my own conjecture.

Question. Did you ever receive any of that money?

Answer. No, sir.

Question. Did you receive any part of the money got by Allen?

Answer. No, sir.

Question. How were you compensated?

Answer. I was compensated by the government for the duty I discharged faithfully and honestly.

Question. At what time was your attention called to this case?

Answer. I would like you to put your question more specifically, and I will then answer you. I have testified to so many points that I don't know to what you refer.

Question. At what time was your attention called to this difficulty between General Fry and Mr. Conkling?

Answer. My attention was first directed to it through the papers.

Question. At what time did you first have any communication with Mr. Conkling, or with anybody, upon this matter?

Answer. At the beginning of the last week.

Question. Were you then in Washington?

Answer. Yes, sir.

Question. How came you to be in Washington at that time?

Answer. I was on my return from Richmond, where I was on business.

Question. Going where?

Answer. To New York.

Question. Did you call on Mr. Conkling?

Answer. No, sir.

Question. Did you in any way communicate to him what you knew of the matter?

Answer. I met Mr. Conkling by accident, and I communicated to him that I knew something about the administration of the provost marshal's bureau at Utica.

Question. What induced you to make that communication?

Answer. My sense of justice, sir.

Question. At what place was the communication made?

Answer. In Washington.

Question. At what place in Washington?

Answer. I don't recollect.

Question. Was it at his house?

Answer. It was in the street somewhere, I believe.

Question. Who was present?

Answer. Not any one that I recollect.

Question. I want you to state what you said.

Answer. I disclosed voluntarily to Mr. Conkling that I knew something of

the administration of the provost marshal or acting assistant provost marshal general of the western division of the State of New York, as well as the administration of the provost marshal of the fourth district.

Question. Then did you disclose what you stated in your testimony?

Answer. I might have disclosed some of it—the substance of what I had testified, but not all of it.

Question. Did you at any time before, testify and disclose to him all you knew of the matter?

Answer. I might have given him a synopsis of what I knew.

Question. Did you ever give it to him in writing?

Answer. No, sir.

Question. Did you tell Mr. Conkling what Allen knew of the case?

Answer. No, sir.

Question. Do you know that Allen was subpoenaed?

Answer. I can't tell you.

Question. Don't you know that it was upon a suggestion of your own?

Answer. I don't know.

Question. Do you know that it was not on your own suggestion?

Answer. I don't know.

Question. How long after you had talked to him about Allen did you get him subpoenaed?

Answer. I can't remember.

Question. When did you go to New York after Allen?

Answer. I think I left there on Wednesday evening.

Question. What time did you get to New York?

Answer. On Thursday morning.

Question. What time did you find Allen?

Answer. That evening.

Question. Did you have any conversation with him on this matter?

Answer. No, sir; we talked the subject, but I did not make it a point to prompt him to anything; I left it all to himself.

Question. Did you have a full conversation with Allen about what you knew of this transaction?

Answer. I might have talked to him, but I can't recollect about what.

Question. How is it you can remember conversation which occurred in March, 1865, and you can't remember what occurred within the last ten days?

Answer. I kept a diary of that.

Question. Where is the diary?

Answer. In my pocket, sir.

Question. Then it was because you kept a diary of the transactions of '65 that you remember them so well?

Answer. Yes, sir.

Question. At what time did you go to the service of Colonel Baker?

Answer. On the 24th of January, 1865.

Question. When did you go to Utica?

Answer. On the 31st of January.

Question. How long did you remain there?

Answer. A day and a half; I saw a great many persons there; I saw Captain Crandall there, the only person that I recollect I did see; I was satisfied everything was all right, so far as Captain Crandall was concerned.

Question. Did you see Richardson there?

Answer. I might have seen him.

Question. Had you any written instructions from Colonel Baker?

Answer. No, I was left to act according to my own discretion.

Question. Your report, you say, was favorable—the report of your doings at Utica?

Answer. Yes, sir.

Question. At what time were you sent to Elmira?

Answer. On the 22d of February; I remained over on Sunday, and left on Friday, the 3d of March.

Question. How many names did you report to Colonel Baker as being men that ought to be arrested?

Answer. I reported the names of Wibell, Dalton, and Burke.

Question. Did you report Major Haddock as being entitled to arrest?

Answer. I did not take that on myself, I left that to him, (Colonel Baker.)

Question. Had you ever been in the detective service before that time?

Answer. I had.

Question. Are you in that service now?

Answer. No, sir.

Question. You say Colonel Baker went to Washington immediately after that report?

Answer. I understood him to go to Washington afterwards; I saw him there on the 4th of March.

Question. Did you take the two men prisoners—Dalton and Burke?

Answer. Yes, I took them down from Elmira.

Question. You don't know what Colonel Baker was doing in Washington?

Answer. I can't exactly say; I know he was there on some kind of official business.

Question. How long after that time was it before you came to be in consultation with Allen and Stanley about these fifty-four thousand dollars?

Answer. Twelve or thirteen days afterwards.

Question. How many days were you in consultation about it?

Answer. I was not in consultation with Allen or his partner on that business at all; I was merely a person that was intimate with them before they got into the confidence of Colonel Baker or General Fry, and that being so, I was never excluded from any of their consultations.

Question. You never made known to anybody the subject of that consultation?

Answer. It had nothing to do with my official capacity, and I did not.

Question. Neither to Colonel Baker nor to any one else?

Answer. No, sir.

Question. Have you served any subpoena in this investigation except the one you served on Allen?

Answer. I have not, sir.

Question. Has Allen been in any way under your charge since he has been here?

Answer. I don't understand you, sir; if you will put that question more explicitly I will answer it.

Question. Whether Allen has been in any way under your charge since you came here?

Answer. I don't pretend to have any influence over Mr. Allen; I had no control, influence, or any other charge of Mr. Allen during my time here.

Question. Have you seen Colonel Baker since you have been here?

Answer. He called on me at Willard's Hotel; that is the only time I have seen him this present time.

Question. What is your present business?

Answer. I have got no special appointment or business at the present time?

By. Mr. HOTCHKISS:

Question. I wish to inquire whether you know anything of General Jeffries being in New York in search of Allen?

Answer. I can't say that I could identify the gentleman, but I understood there was a gentleman named Jeffries in Washington inquiring for Allen.

Mr. HOTCHKISS, on behalf of Captain Crandall, asked to be allowed to prove to the satisfaction of the committee that all the charges and imputations upon him contained in the letter of General Fry, sent to the House of Representatives, or any documents appended to that letter, or any other documents that he has offered before this committee, are without foundation.

The request was not acceded to on the grounds stated in previous rulings of the committee.

Mr. HOTCHKISS offered in evidence the following papers, as bearing upon the question of the truth or falsity of General Fry's assertion in his letter that the third issue between him and Mr. Conkling was as to the government employing counsel to defend Captain Crandall after he had been relieved, and had carried with him, in violation of the orders, the \$20,000 local bounty :

1st. A despatch sent on the 8th of March, 1865, to Major Haddock, by S. Floyd Hoard, of Utica. (See evidence of Hon. Ward Hunt.)

2d. A letter to James B. Fry, from Captain Crandall, dated March 11, 1865, and stating fully and particularly all there was about these bonds; and appended to it is a statement in detail, and accounts, dates, figures, names, and accounts of all moneys, checks, bonds, and vouchers deposited with Captain Crandall on account of local bounties. (See evidence of Hon. Ward Hunt.)

3d. Is a letter written March 11, 1865, by the Hon. Ward Hunt to Mr. Secretary Dana, in reference to this subject,

4th. The following enclosure, in Captain Crandall's letter :

[Circular No. 32.]

HEADQUARTERS ACTING ASSISTANT PROVOST MARSHAL GENERAL AND
SUPERINTENDENT OF VOLUNTEER RECRUITING SERVICE, W. D. N. Y.,
Elmira, February 3, 1865.

CAPTAIN: Circulars 19 and 20, from these headquarters, dated respectively January 17 and 18, 1865, are hereby rescinded, and the provost marshals are hereby instructed that the local bounties to enlisted men may be paid in county money, bonds, or such other securities may elect or consent to accept.

JOHN A. HADDOCK, *Twelfth Vet. Res. Corps,*
A. A. P. M. G., W. D. N. Y.

Captain P. B. CRANDALL,
Provost Marshal Twenty-first District, N. Y.

5th.

UTICA, March 13, 1865.

Major JOHN A. HADDOCK,
Acting Assistant Provost Marshal General:

Your letter by Major Beadle, of the date of March 11, 1865, is received. In this letter you direct me to turn over to Major Beadle the bonds and moneys in my possession which I have received from any source whatever in discharge of my duties as provost marshal. I have the honor to reply to this direction—1st, That I am informed by my counsel, Ward Hunt, esq., that I am personally responsible to individuals for this money and these securities, and that I cannot safely comply with your direction. 2d, That on the 11th I wrote through you to General Fry, giving the facts, and asking for specific directions in regard to this money and these securities. I am now awaiting his reply. This letter has also been forwarded to the War Department.

Very respectfully, your obedient servant,

P. B. CRANDALL.

[Original by telegraph.]

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S OFFICE,
Washington, D. C., March 30, 1865.

All moneys, bonds, and other evidences of indebtedness in your possession belonging to enlisted men who have deserted, either before or after arriving at the general rendezvous, will be immediately turned over to Major Lee, mustering and disbursing officer at Rochester. All moneys, bonds, and other evidences of indebtedness in your possession belonging to enlisted men other than deserters will be immediately turned over to the United States paymaster stationed at draft rendezvous at Elmira. You will report by telegraph compliance with this order.

JAMES B. FRY, *Provost Marshal General.*
Captain Crandall, (care of Major Beadle,)
Acting Provost Marshal, Utica, New York.

OFFICE OF THE UNITED STATES MILITARY TELEGRAPH.

The following telegram received at Washington 10.30 a. m., April 1, 1865—4 from Utica April 1, 1865.

JAMES B. FRY: Your communication received. Will comply at once. Send particulars by letter.

P. B. CRANDALL.

8th. The letter giving the particulars referred to in the above telegram. (See evidence Hon. Ward Hunt.)

9th. (Enclosure in letter to General Fry.)

UTICA, NEW YORK, April 1, 1865.

MAJOR: I have the honor to report the following order from James B. Fry, Provost Marshal General directed to me, viz.: "All moneys, bonds, and other evidences of indebtedness in your possession belonging to enlisted men who have deserted, either before or after arriving at the general rendezvous, will be immediately turned over to Major Lee, mustering and disbursing officer at Rochester." And in compliance permit me herewith to turn over to you the enclosed vouchers. Said vouchers were received from Lieutenant Colonel D. C. Poole, and were by me presented to the board of supervisors, asking for an appropriation to pay the same, (which matter was referred to a special committee to report at a future meeting,) and are all that is included in the above order, that remains in my hands as belonging to enlisted men who have deserted. The men for whom these vouchers were given deserted while Captain J. P. Richardson had charge of these headquarters. The names of the men enlisted and the amounts due on account of such enlistments are as follows:

Michael Dowd	\$500
Phillip Cummings	500
Louis F. Nutter	500
Patrick Dolan	300
William Williams	300
John Dean	500
	2,600

I am, major, very respectfully. your most obedient servant,

P. B. CRANDALL,

Captain and Provost Marshal 21st District, New York.

Major LEE, *Mustering and disbursing officer, Rochester, New York.*

10th. (Other enclosure in this letter to General Fry.)

UTICA, April 1, 1865.

DEAR SIR: I have the honor to report the following order from James B. Fry, Provost Marshal General, directed to me, viz.: "All money, bonds, and other evidences of indebtedness in your possession, belonging to enlisted men other than deserters, will be immediately turned over to the United States paymaster, stationed at the draft rendezvous, Elmira." In compliance with said order, permit me to turn over to you five thousand four hundred and ninety five dollars (\$5,495) that has been received by me, being local bounty money paid to enlisted men, which is all that is in my possession included in such order.

Enclosed find a statement in full with names of enlisted men, the amount left by each with me, and the direction given by the recruit at the time of his enlistment for its disposition.

I will forward the above amount by express as soon as banking hours will permit.

I am, sir, most respectfully, your obedient servant,

P. B. CRANDALL,

Captain and Provost Marshal, 21st District, N. Y.

JONO. LADD, *Paymaster U. S. A., Elmira, New York.*

Also an enclosure:

Statement of money left with me by recruits at the time of their enlistment, with their direction as to its disposal, by order of James B. Fry, Provost Marshal General, turned over by me to Jono. Ladd, paymaster United States army, Elmira, New York:

James Wilson, \$250: This amount was turned over to me by Lieutenant Colonel D. C. Poole, as belonging to John Barnett, who is unknown to me. Paid James Wilson, deserted. Money has not been called for.

Daniel Kennedy, \$200: This sum was turned over to me by Lieutenant Colonel D. C. Poole, as belonging to the recruit. It has not been called for.

Edward Smith, \$400; Samuel Kirker, \$400; John Rogers, \$500: These three were minors. Their parents live in Troy, and came here and forbade the payment to any party or parties other than themselves. Said they would make application for their discharge, and, if unsuccessful, would call for this money.

John Ray, \$460: Directed this money to be sent to his mother, Mrs. Mary Ray, No. 20 City Hall Place, New York. I have received letters stating that she is very poor, and in great need of this money.

Henry Howard, (colored,) \$580: Wishes his money to be sent to his mother, Mrs. Jane Howard, Carlisle, Pennsylvania. I am informed she needs this money very much.

Charles Conroy, \$400: To be sent by express to Mrs. Condon, No. 45 Morton street, Albany, New York.

Lawrence Killey, \$400: Sent by express to Mrs. Killey, No. 9 Johnson Street, Albany, New York.

Charles Reed, \$500: To be paid to John Burke; to get it at this office.

Edwin H. Kellog, \$100: To be paid to his father, who has often called for it.

Thomas Rock, \$75: To be paid to S. Boyd, Utica; borrowed money.

Matthew Gilson, \$680: To be paid to his brother, Boonville; been called for often.

R. H. Coppernol, \$550: To be paid to his wife, who is sick in child bed, and destitute. This money has been sent for almost daily.

Total amount, \$5,944.

P. B. CRANDALL,

Captain and Provost Marshal, 21st District, New York.

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,
Washington, D. C., April 5, 1865.

CAPTAIN: I am directed by the Provost Marshal General to acknowledge receipt of your communication of the 1st instant, reporting the transfer, by you, of \$5,495 to Major Ladd, and \$2,600 to Major Lee, and to invite your attention to the fact that, in a tabular statement of moneys, checks, bonds, and vouchers deposited with you, on account of local bounties forwarded by you to this office, you admit having in your possession \$33,995, which leaves a balance of \$25,900 unaccounted for.

The Provost Marshal General directs me to inquire what disposition you have made of the balance, amounting to \$25,900.

I am, captain, very respectfully, your obedient servant,

C. MCKEEVER,

Assistant Adjutant General.

Captain P. B. CRANDALL,

Care of Major Beadle, Acting Provost Marshal, Utica, N. Y.

UTICA, N. Y., April 11, 1865.

GENERAL: I have the honor to acknowledge the receipt of your communication of the 6th instant, calling my attention to my report of \$33,995, money and other securities, in my possession, and asking information as to the disposal of the residue by me, after remittances to Major Lee and Major Ladd. In reply I would respectfully refer you to my letter of March 11th, for a full statement of all the matters inquired for. I will also transmit, by the mail of to-morrow, a renewed statement of the information desired by you, and in a convenient form.

I am, general, most respectfully, your obedient servant,

P. B. CRANDALL,

Captain and Provost Marshal, Twenty-first District, New York.

JAMES B. FRY, *Provost Marshal General, Washington, D. C.*

UTICA, N. Y., April 13, 1865.

GENERAL: I have the honor to acknowledge the receipt of your communication dated April 6th, through Chauncey McKeever, Assistant Adjutant General, saying: "You admit having in your possession \$33,995, and having transferred to Major Ladd \$5,495, and to Major Lee \$2,600, which leaves a balance of \$25,900 unaccounted for."

In answer, I have the honor to report that the county bonds, claimed by Aaron Richardson, have been seized by writ of replevin, issued by him, and taken from my possession—

Amounting to	\$20,000
Returned to Van Embergh and Townsend their check	1,100
Returned to P. Kiernan his money	1,650
Returned to A. Richardson his money	1,200
Previously turned over to Major Wm. H. H. Beadle	1,950
Turned over to Major Ladd	5,495
Turned over to Major Lee	2,600
Total	<u>33,995</u>

You will see, by referring to my report to you bearing date March 11th, also by the enclosed printed statement, (of which, I am told, Mr. Conkling has forwarded a copy to you.)

a full statement of the terms upon which these bonds, checks, vouchers, and money were placed in my hands, and in my communication of March 11th a request for specific instructions as to the disposal of each of the different cases was made.

In answer, I received your order to turn over to Major Ladd and Major Lee "all money, bonds, and other evidences of indebtedness in my possession belonging to enlisted men," which order I obeyed in full. The remaining funds in my possession did not and never had belonged to enlisted men. No directions have been received from you as to these moneys and securities, and they have now been disposed of as above stated.

The bonds of \$20,000, claimed by A. Richardson, were taken while in the hands of my counsel by the sheriff of Oneida county. They are now deposited in the Oneida County Bank, under a written agreement that they shall there remain to abide the result of such replevin suit. I respectfully request the government to take charge of that suit and relieve me of all responsibility in regard to it. In the event, however, that no charge is taken of it by the government, I have placed it under the direction of Messrs. Hunt, Waterman & Hunt, who will appear as my attorneys in the case. I have the receipt of Van Emburgh and Townsend, showing their continuing liability to the government, in case their checks were improperly returned to them. These checks were given as security for two recruits who deserted. Van Emburgh and Townsend claim that these recruits were voluntarily and corruptly discharged by Sergeant Sabine, who had charge of the barracks, by order of Major John A. Haddock.

The \$1,650 paid to P. Keirnan was his money left as security for the going forward of three recruits who went forward to the rendezvous and were receipted to me. The \$1,200 paid to A. Richardson, was his money left as security for the going forward of two recruits, who went forward and were receipted to me.

I am, general, very respectfully, your obedient servant,

P. B. CRANDALL,

Captain and Provost Marshal, Twenty-first District, New York.

JAMES B. FRY,

Provost Marshal General, Washington, D. C.

15th. Letter of Captain Crandall to General Fry, dated September 15, 1865.
(See evidence of Hon. Ward Hunt.)

To all these papers the counsel for General Fry object, on the ground that a former ruling of the committee excluded the introduction of any evidence touching the administration of Captain Crandall's office.

The CHAIRMAN. These letters will be received in evidence by the committee, and considered, not for the purpose of showing anything as to the good or bad official conduct of Captain Crandall, except only so far as they tend to show what efforts were made by him and by Mr. Conkling to have a lawsuit instituted touching the local bounties alleged to be in his, Captain Crandall's, hands, and to have the government employ counsel in that lawsuit, and this as bearing upon the charge in that record contained in the letter by General Fry to Mr. Blaine.

NATHAN G. AXTELL sworn and examined.

By Mr. HOTCHKISS:

Question. Where do you reside?

Answer. Peru, Clinton county, New York.

Question. Were you summoned here on behalf of General Fry?

Answer. I received a summons about two weeks ago, on whose behalf I did not know.

Question. Did you come here upon that summons?

Answer. I did.

Question. Did you see General Fry?

Answer. I did not. I saw General Jeffries; though in the first place I reported to the committee.

Question. Are you colonel of the 192d New York volunteers?

Answer. I was.

Question. Did you write or sign a letter which appears here in this paper, (Daily Globe, sup., May 1, 1866,) addressed to Lieutenant Colonel F. Townsend?

Answer. I did.

Question. Did you see certain men, coming, as you understood, from the 21st district of New York, to your regiment?

Answer. There were some men who came to the rendezvous at Albany, the rendezvous of the Veteran Reserve Corps. I was only provisional colonel of the regiment at the time. These men were reported to me as coming from there. I saw the books, and from them came to that understanding.

Question. Did you know some of the men as residents of Albany, as you supposed?

Answer. I did not.

Question. State everything that constitutes an able-bodied soldier; whether these men were or were not able, athletic, vigorous men.

Answer. The *physique* of the men, so far as I could see, and I looked them over carefully, was good.

Question. No fault to be found with them in that respect?

Answer. No, I should say not.

Question. Was there anything about those men which you could discover which would have rendered it improper for a mustering officer to muster them in, or which would have justified him in refusing them if they had presented themselves like other men to be recruited?

Answer. So far as their *physique*, none whatever. They appeared very rough when they came there. They were not in uniform. That is the way I knew the men from the Utica district. They were reported as coming without any uniform.

Question. Did the recruits from the other districts, so far as you know, come with uniforms?

Answer. Always, with but one exception of seven men from one other district, who came without the uniform.

Question. Did you at any time inquire far enough about it to find out that the provost marshal of the 21st district had been unable to obtain clothing?

Answer. All I know about that matter is that I communicated with Colonel Townsend about it. I only know what was reported to me from Colonel Townsend.

Question. Did you ascertain anything on that point?

Answer. I did inquire about it and ascertained to my satisfaction. I was satisfied that there was some difficulty in obtaining clothing.

Question. Did they come in old citizens' clothing?

Answer. Yes, exceedingly ragged and tattered.

Question. And that gave them a very bad and demoralized appearance?

Answer. The same men, after being uniformed, and we had a company of them, presented a very different appearance.

Question. Aside from the fact that these men were in this rough condition, was there anything whatever, as far as you could see, which constituted any objection to their being mustered in as soldiers?

Answer. As I said before I do not know under what particular orders or instructions they were laboring. I might say that my judgment of those men was somewhat colored by the knowledge of other facts and circumstances that came to me.

Question. I ask you whether these facts or circumstances had anything to do with Captain Crandall or some other person?

Answer. That did not relate to Captain Crandall.

By the CHAIRMAN:

Question. Your letter objects to them on the ground of their being bounty-jumpers?

Answer. Yes, sir.

By Mr. RIDDLE:

Question. Do I understand you as saying in any way that your letter is not a truthful statement?

Answer. My letter is a truthful statement as it appeared to me at the time.

Question. Written in perfectly good faith?

Answer. Written in good faith.

Question. Did it at any time after that come to your knowledge that these men, of which a complaint is made in this letter, were not bounty-jumpers, as you supposed them to be?

Answer. Some were and some were not, I supposed. Some of them deserted, as did many from other districts.

Question. I wish to inquire whether if you were not notified by General Jeffries nearly two weeks ago that you need not remain here?

Answer. I was; the day that I reported.

Question. Was there any reason given by General Jeffries why you were not called; if so, what?

Answer. The reason was, because that class of testimony was ruled out.

By Mr. HOTCHKISS:

Question. You said that when you wrote your letter the facts appeared to you as you have stated them. By that, did you refer to statements which came to you in reference to what Aaron Richardson was doing?

Answer. I did, except as I have stated on my direct examination.

Question. Did subsequent facts disclose to you the erroneous assumption of these rumors?

Answer. As to some of these men it did. The body of the company remained; but still a number of them deserted, as did many other men from the regiment.

Question. Was this draft rendezvous under the control of the provost marshal's bureau, or somebody else?

Answer. Yes; the assistant provost marshal of the western division of New York.

Question. Now, from that rendezvous how many men in all, as near as you can tell, that were mustered into your regiment, deserted?

Answer. I could not tell the precise number. My impression is about three hundred. About 1,300 or 1,400 were sent to the regiment.

Question. Where was that rendezvous?

Answer. Near Albany.

Question. Were there not over 400 deserted?

Answer. I do not know that it was. My recollection is, that it was upwards of 300. A large number deserted in the field after leaving the rendezvous.

Question. Were these desertions of men who came indiscriminately from various districts?

Answer. Yes; five or six different districts of western division of New York.

Question. Can you tell how many men deserted who came from the 21st district?

Answer. I do not know.

Question. Can you say that 10 did?

Answer. My impression is that there were at least 30.

Question. Was that more or less than deserted at other districts?

Answer. I should say that, according to my recollection, no greater proportion deserted from that district than from any other.

By Mr. RIDDLE:

Question. Did you make any protest against receiving men from any other district than the 21st?

Answer. I did not.

By Mr. HOTCHKISS :

Question. Why was that?

Answer. The reason why is, that I received these men very early, when I first began to recruit, before I had received them from anywhere else, and at the time of receiving these men I received information, which I deemed reliable, of Aaron Richardson's appearing there and running in bounty-jumpers.

Mr. Hotchkiss placed in evidence the following papers :

CAPTAIN P. B. CRANDALL, *Provost Marshal, Utica, N. Y. :*

Commence the draft in your district on the 15th of March.

JOHN A. HADDOCK,
Major and Acting Assistant Provost Marshal, Western District, N. Y.

[Circular No. 50.]

HEADQUARTERS, &C., *Elmira, N. Y., March 6, 1865.*

CAPTAIN: The order hitherto transmitted to you to commence the draft in your district on the 15th instant; I write now to notify you that the draft must commence promptly on that day for such sub-districts under your charge as may be deficient. In case any of the local committees claim that their credits are full, and you have not received the credits thereof, you will still make the draft in such sub-districts and cause notice to be served on drafted men, depending upon receiving credits before that time has expired, and for the drafted men to report. You will be held to a strict account for the literal carrying out of this order.

JOHN A. HADDOCK,
Major 12th V. R. C. and Provost Marshal General, Western Division, N. Y.
Captain P. B. CRANDALL,
Provost Marshal 21st District, N. Y.

ACTING PROVOST MARSHAL GENERAL'S OFFICE,
Elmira, N. Y., November 13, 1865.

Respectfully returned to Captain P. B. Crandall, provost marshal twenty-first district, New York, for correction. The quota of the twenty-first district, on the call of December 19, 1864, is, as determined by the department and forwarded to you, 1,044, and should so appear on the within return. Twenty-five per cent. was not to be deducted, but temporarily suspended for further investigation. The credits for the twenty-first district for the month of January, 1865, were 205; for one year, 8; for two years, 1; for three years, 194; and for four years, 2.

JOHN A. HADDOCK, *Major, &c.*

It is here agreed that the evidence offered in relation to the desertion of John Dean is not in evidence.

It is also agreed that the interrogatory and the answer thereto, touching General Jeffries, is not to go upon the record.

SCHUYLER HUBBARD sworn and examined.

By Mr. HOTCHKISS :

Question. Where do you reside?

Answer. Utica, New York.

Question. How many years have you resided in Oneida county?

Answer. Born there; some sixty years.

Question. Have you read this letter of General Fry's which has been referred to?

Answer. I have.

Question. Did you read the statement in it about Mr. Conkling's making a case for himself by telegraphing to the War Department that his provost marshal needed legal advice?

Answer. Yes, sir.

Question. Do you know whether that statement is true?

Answer. I know it is not true?

Question. Are you an old United States marshal?

Answer. I have acted in that capacity.

Question. Do you remember the occasion of the arrest of an alleged deserter named Hobson?

Answer. I do.

Question. Under what authority was he arrested?

Answer. Under the authority of the provost marshal, as a deserter.

Question. By military authority?

Answer. Yes, sir.

Question. Was a *habeas corpus* issued?

Answer. Yes, sir, for his return, by Judge Bacon, justice of the supreme court.

Question. Was a return made to that writ?

Answer. Yes, sir.

Question. Who drew the return?

Answer. I drew it.

Question. Why did you draw it?

Answer. For the reason that I could not find counsel to do it. I was the special agent of the marshal, and he put the thing into my hands. He believed I could manage it in the absence of counsel. I went for several, but could not find adequate counsel; and having had some acquaintance with such matters, with the help of such books as I could find, I ventured to draw an answer.

Question. Are you a lawyer?

Answer. I am not. I drew up an answer, refusing to produce the person in court, or to render him up to the custody of the civil authorities.

Question. Will you state whether you telegraphed the district attorney?

Answer. Yes, sir. There was an objection made to the return, and an attachment applied for.

Question. Was the return overruled?

Answer. Yes, sir, and attachment issued. Then I asked time to get counsel and to inform the United States district attorney, Dart. Time was granted, and I telegraphed to Mr. Dart, at Potsdam, and got a reply that he was in Albany. I telegraphed to Albany, and was replied to, to confer with his assistant in Potsdam. I telegraphed and wrote to Potsdam, and he instructed me to procure counsel on his account. I called at Mr. Conkling's office, and at several others. I went to Mr. Doolittle's, Mr. Hunt's, and Mr. Duer's, and conferred with several individuals, and could not find counsel whom I deemed adequate. I communicated with Mr. Conkling and he telegraphed to Washington.

Question. Was there a great deal of public commotion and excitement?

Answer. A good deal.

Question. What was the occasion of it?

Answer. One thing was, that this man Hobson and friends were influential. His father was a man of considerable wealth, and there was much feeling of opposition to what was termed "summary arrests."

Question. Was this before or after the July riots in New York?

Answer. Shortly after.

Question. Who was the sheriff of Oneida county?

Answer. Hugh Crocker, a man who was termed a "copperhead."

Question. Was there some fear that there would be a collision between the military and civil authorities, and perhaps bloodshed?

Answer. There was a good deal of apprehension.

Question. Do you know whether the despatch sent by Mr. Conkling was sent upon the advice and application of several citizens?

Answer. It was.

Question. Did a despatch come back?

Answer. I so understood it. We were instructed from the department to hold on to our prisoner.

Question. Was the case afterwards argued at length?

Answer. It was, by Mr. Conkling, for the government, and by Francis Kernan, for the prisoner. Kernan was a representative in Congress.

Question. Was this a test case?

Answer. It was so regarded.

Question. How was it decided?

Answer. It was decided in favor of the government.

Question. Was it appealed to the general term?

Answer. I understood it to be so.

Question. There never was any more trouble about arbitrary arrests in the State of New York, or question as to the right of the military authorities to hold a deserter against a *habeas corpus* of the State?

Answer. No, sir.

Question. It has been said here that there were charges against Captain Joseph P. Richardson, which were in the hands of the district attorney of Oneida county long ago, to investigate. Do you know that fact?

Answer. I understood there were complaints of some kind against him, of which the district attorney had charge, received by him from the district attorney of the northern district of New York.

Question. On what ground were they transferred from Mr. Dart to Mr. Jenkins?

Answer. I do not understand.

Question. Did you happen to be a member of the grand jury to whom these charges were presented by the district attorney?

Answer. I was.

Question. Were you the clerk of the grand jury?

Answer. I was.

Question. Did you vote yourself, either one way or the other?

Answer. I did not.

Question. Was it passed upon by the grand jury?

Answer. It was.

Question. Any indictment found?

Answer. There was not.

Question. Do you know whether the action of the grand jury was unanimous?

Answer. It was, on Richardson's case.

Question. How large was it?

Answer. In the neighborhood of twenty members.

Question. Composed of men of both political parties?

Answer. It was.

By the CHAIRMAN:

Question. Where was this Mr. Burt from?

Answer. Belonged in Utica.

Question. This Burt was the man in whose case charges were made against Richardson?

Answer. Yes, sir.

JUNE 14, 1866.

Mr. HOTCHKISS. The right to cross-examine General Fry generally in the case is now insisted upon by Mr. Conkling, and he asks that General Fry be compelled to submit himself to a cross-examination. It is insisted that General Fry being the author of a letter, which the committee is, among other things, investigating, and an oath having been administered to him as a witness by the committee, he is bound to allow himself to be cross-examined. It is proposed to cross-examine him on all matters material to the issue before the committee, as to his own act in writing the letter read to the House of Representatives, his

motive and malice in doing it, and as to every other matter or thing affecting his standing before the committee as a witness or otherwise.

Mr. RIDDLE. I claim that the position occupied by General Fry under the oath administered to him is such that he cannot be legally subjected to a cross-examination of any kind, or for any purpose. I wish to state further, that General Fry is entirely at the disposition of the committee as a witness, to be called or not like any other witness, as they in their judgment may direct; that if so called his testimony is to be regarded as the testimony of the party upon whose suggestion he is called, and subject only to cross-examination or impeachment from the other side.

Mr. HOTCHKISS. I submit to the committee that the proposition of General Fry's counsel is proposed merely for General Fry's protection, insomuch as its object and effect is to prevent him being contradicted, impeached, or discredited, and insomuch as the object of Mr. Conkling in asking to cross-examine him is to be permitted to contradict, to discredit and to impeach him.

The CHAIRMAN, (after deliberation by the committee.) The committee hold that as General Fry gave no testimony as a witness in his own behalf, if Mr. Conkling examines him it must be as his own witness whom he calls, and cannot impeach by general evidence affecting his credibility; but should Mr. Conkling choose to call him he may, from General Fry's known relation to the case, ask him leading questions.

Hon. REVERDY JOHNSON sworn and examined.

By Mr. HOTCHKISS:

Question. A statement of the services of Mr. Conkling in the Haddock court-martial having been made to the witness by the chairman of the committee, he was asked his opinion as to whether the amount received was a reasonable compensation?

Answer. I should not have performed the service for less than \$5,000. I think \$3,000 a very moderate compensation. For services to the Navy Department some years ago, not as difficult or complicated, I received a fee of \$5,000 in prosecuting a vessel that had been guilty of piracy.

Mr. HOTCHKISS placed in evidence the following papers:

Colonel L. C. BAKER, No. 12 *Vesey street, New York.*

Allen is here and tells me he can provide information about the Utica district. I have told him to do so; he starts back to New York to-night; will see you. Produce all the facts in the case.

JAMES B. FRY,

Provost Marshal General.

WASHINGTON, D. C., *March 4, 1865.*

Captain H. J. MILLS, *Provost Marshal, 5th district, New Jersey.*

Until otherwise ordered you are directed to allow credits for such men as Lieutenant Colonel Ilges, captain 14th United States infantry, has certified to you are enlisted by him. He is recruiting at Hoboken. Inform Colonel Ely of this order. This command is special and confidential.

JAMES B. FRY,

WASHINGTON, *March 25, 1865.*

Colonel L. C. BAKER, 12 *Vesey street, New York.*

You must prepare and send me all the facts in the case of the Utica district without reference to Ludington's report. It is absolutely necessary for me to have them, whether Ludington has been able to obtain them or not. See Allen and let him make it his special business to study this matter out.

JAMES B. FRY,

Provost Marshal General.

Hon. HAMILTON WARD sworn and examined.

By Mr. HOTCHKISS :

Question. Are you a representative in Congress ?

Answer. I am, sir.

Question. From where ?

Answer. Twenty-seventh district, New York State ; the Elmira district.

Question. Do you know Provost Marshal General James B. Fry ?

Answer. Some little acquaintance with the gentleman. Seen him twice and talked with him. Have a slight acquaintance with him.

Question. When did you first see him ?

Answer. I think it was in April, 1865.

Question. Where did you see him ?

Answer. At his office here in Washington.

Question. You had an interview with him ?

Answer. I did.

Question. On the subject of the provost marshal of your district ?

Answer. Yes, sir.

Question. I wish you to state to the committee what General Fry's conduct and deportment was on that occasion, and what he said to you and how he said it.

(Objected to.)

Mr. CONKLING. I offer to show by this witness, and by others, that General Fry, in his intercourse with members of Congress, has so conducted himself that he has been to his face denounced by them as a dishonored man and a liar ; that his conduct has been ungentlemanly, and his language abusive and profane, and the offer is made to show the falsity of the following passage in his letter :

"My official intercourse with representatives of Congress during the past three years has been constant, and in many cases intimate, and, with the solitary exception of Mr. Conkling, it has been marked, so far as I remember, with mutual honor and fair dealing."

General Fry, by his counsel, says that he is not disposed to make any objection to this offer.

The CHAIRMAN. The committee decide that the evidence proposed to be offered, as set forth in the statement of Mr. Conkling, bears too remotely, if at all, upon the charges against Mr. Conkling, to make it proper to be entered upon now, as the committee have determined to limit their investigation at present to the charges made against Mr. Conkling, in the letter to Mr. Blaine

JUNE 15, 1866.

Mr. HOTCHKISS placed in evidence the following:

WAR DEPARTMENT,
Provost Marshal General's Office, Washington, D. C., May 1, 1865.

CAPTAIN: Your services being no longer required by this bureau, by direction of the President you are hereby discharged the service of the United States.

I am, captain, very respectfully, your obedient servant,

JAMES B. FRY,
Provost Marshal General.

Captain P. B. CRANDALL, *Provost Marshal 21st District New York, Utica, N. Y.*
(Through Major S. B. HAYMAN.)

Also the following extract from a letter, dated April 24, 1865, to General Fry :

"I have the honor to state that, under date of April 14, I sent charges and specifications to the Secretary of War, with a letter saying that the most convenient time at which the trial could occur was the earliest time ; indeed, should the trial go over the month of May so as to conflict with the courts which begin with June, I could scarcely arrange to attend it, though to great sacrifice in other directions.

"The charges, &c., as sent do not contain several matters which others believe are of grave character, but which ought not, I think, to be charged without further investigation. This I cannot make without a messenger to proceed to different places; and it may not be necessary to go beyond the matters already stated. The bundle of papers on file in your office, which I read at the request of the Secretary of War, is pregnant with evidence. Dates and allegations showing information of certain matters, &c., &c., appear in nearly all the papers. I think they would throw much light upon the investigation if I had them, as would, perhaps, other papers on file in some of the bureaus of the War Department, especially a report of the doings of Major (then Captain) Haddock, at Watertown, in the sale of transportation and of alleged * * * * *

"I have the honor to be, &c.,

"ROSCOE CONKLING."

MARCELIN LAFOURICODE DE COURSEY sworn and examined.

By General JEFFRIES :

Question. Where do you live?

Answer. Philadelphia.

Question. What is your employment?

Answer. I am a salesman in a domestic commission dry-goods house.

Question. For what house?

Answer. For the house of De Coursey, Hamilton & Evans.

Question. Were you chief clerk in the Provost Marshal General's office? if so, when?

Answer. I was from August 11, 1864, to March 31, 1865, inclusive.

Question. Look at this paper and see if that is a copy of a despatch, of which it purports to be a copy, which was received? (The despatch is a telegram from Major Haddock to General Fry, dated March 4, 1865, referred to Colonel L. C. Baker, with directions to investigate affairs in that district as soon as practicable.)

Answer. That telegram was received.

Question. Do you know whether it was referred to Colonel L. C. Baker?

Answer. Yes, sir. I remember its having been referred. I have an idea I wrote the reference. I have no doubt about it.

(Objected to by Mr. HOTCHKISS, and objection overruled.)

Question. What part of the War Department building does General Fry have his room or place of doing business?

Answer. Right over the office of the Secretary of War, third story, southeast corner, corresponding to the room of the Secretary of War.

Question. Who occupied that room during the month of March, 1865?

Answer. General Fry and myself.

Question. State if, during any portion of the time you were connected with the War Department, anybody occupied that room except General Fry and his confidential clerk, whoever that might be?

Answer. You mean permanently as occupants of the room? A great many visitors came in.

Question. How many clerks occupied that room?

Answer. Only myself.

Question. Were you ever, on any occasion, sent out of that room during any conversation between General Fry and any other person?

Answer. Never. General Fry never sent me out of that room.

Question. Were you during the month of March, 1865, the confidential clerk of the Provost Marshal General?

Answer. Yes, sir.

Question. Did you write the confidential despatches here marked as confidential?

Answer, (examining the despatches.) I wrote this one, March 18, to Allen; and this one, March 25.

Question. Where was that despatch about Allen, dated the 18th, written?

Answer. At my desk in General Fry's office.

Question. State whether on the 18th of March any other clerk was in that room to your knowledge.

Answer. No, sir; not to my knowledge.

Question. State whether any clerk was in the habit of coming into that room.

Answer. Only when General Fry sent for them. I never saw a clerk come in there to take a seat to do anything except myself.

Question. State whether on that day General Fry approached any person and placed his hands upon his shoulders, or manifested any affection of that sort for any person during that day, to your knowledge.

Answer. I never saw General Fry do anything of that kind to anybody.

Question. If he had done any such thing as that on that day or any other day, would you have known it?

Answer. I think it would have made a great impression on me.

Cross-examination by Mr. HOTCHKISS :

Question. How many clerks had General Fry in February and March, 1865?

Answer. I suppose in his office he had about twelve clerks.

Question. But how many in his bureau?

Answer. Two or three hundred.

Question. How many of this two or three hundred clerks occupied desks in the War Department building?

Answer. Probably about thirty.

Question. Are you a short-hand writer?

Answer. No, sir.

Question. Did General Fry keep a short-hand clerk to write at his dictation?

Answer. Not at that time—in March, 1865.

Question. Or during any part of March, 1865?

Answer. No, sir.

Question. Nor any person who took down in short-hand his correspondence?

Answer. Not that I remember.

Question. Do you mean to testify that he had no short-hand clerk in March, 1865?

Answer. I expect there were several of them in the bureau.

Question. Do you not know that he was in the habit of making use of these short-hand clerks at that time?

Answer. I do not know of such a thing.

Question. Do you know whether he did or not?

Answer. I do not know that he did, sir.

Question. I ask you whether you know he did or did not. Do you know whether General Fry made use of these short-hand clerks or not in March, 1865?

Answer. I should say he did not.

Question. You mean, then, to testify that you know he did not, do you?

Answer. I cannot testify exactly to what you say, because that would be doing too much. I may have gone out to lunch for half an hour—

Question. What time did you go to the office mornings?

Answer. At nine o'clock, or a little before.

Question. What time did you leave?

Answer. At four o'clock. Those were our office hours. Sometimes I staid there afterwards.

Question. Did General Fry occupy more than one room?

Answer. There was a room opposite to General Fry's room, across the hall, that he sometimes went to.

Question. And fenced off with a passage between?

Answer. No, sir; you passed right through the hall.

Question. And he occupied these two rooms indifferently?

Answer. No, sir. He occupied one room; the other he very seldom went into. He kept papers there. It was the Secretary of War's room, and the Secretary went there a good deal.

Question. Did any clerk occupy that room?

Answer. No, sir, not while I was there; no person occupied that room.

Question. In which room did you say you wrote the despatch for Fry that you have mentioned?

Answer. I wrote that one about Allen in the southeast room.

Question. Are you positive of that?

Answer. I am, sir.

Question. Why do you recollect writing *that* despatch?

Answer. Because it impressed itself upon my mind, I suppose.

Question. Have you any other reason?

Answer. I do not know as I have any other particular reason.

Question. Have you any other *general* reason?

Answer. I had charge of all those despatches, and took an interest in that case, in arresting those bounty-jumpers.

Question. Do you recollect any other despatch you wrote of that date?

Answer. I do not know, sir.

Question. Do you know Theodore Allen?

Answer. I do not know, sir; I might know him, if I should see him.

Question. Did you ever see him?

Answer. Not to my knowledge.

Question. Then, of course, he was not present when you wrote this despatch?

Answer. Not that I know of.

Question. What time of day was that?

Answer. That's more than I can tell.

Question. Was it day or night?

Answer. It was in the daytime. I don't think I ever was there in the night.

Question. Can you state the hour of the day?

Answer. I cannot, sir.

Question. Why do you remember writing this particular despatch, at a particular desk, on a particular day, and not be able to state the hour you wrote it?

Answer. The despatch is dated, in my writing, the 18th. That's the way I come at it.

Question. Do you know whether you wrote it on that day, or the day after, or the day before?

Answer. The next day was Sunday.

Question. Can you state whether you wrote this despatch on the day it bears date, or the day after, or the day before?

Answer. The despatch was written on the 18th of March; whatever is its date, it was written on that day.

Question. How came you to state "Allen is here," if Allen was not there?

Answer. Because General Fry told me to. I wrote that from his dictation.

Question. Do you recollect what time you went to the office that particular morning?

Answer. No, sir.

Question. Do you recollect any business you did that day?

Answer. I did a good deal; don't recollect anything particular besides that.

Question. Do you recollect any person who came to the office that day?

Answer. Can't swear to it; it was some time ago.

Question. Do you know how many of the clerks, or which of the clerks, were in General Fry's room that day, or what their errands were there?

Answer. No, sir.

Question. Do you recollect comparing some papers that day with another clerk?

Answer. I do not know, sir.

Question. Do you recollect whether you did or not?

Answer. I do not know, sir.

Question. Do you recollect comparing papers in that room about the month of March with another clerk?

Answer. I do not know, sir.

Question. Was there a day passed over your head, while you were there, without different clerks coming into this one room, which, you say, was General Fry's headquarters?

Answer. I could not swear that there was not one who did.

Question. Was there any one day when other persons and clerks did not come in to sit down?

Answer. I never remember a clerk in that bureau coming into General Fry's room and sitting down. Other persons came in and sat down; but no clerk would have done so but myself—I belonged there.

Question. After business hours, did they ever come in and take the liberty of sitting down in that room?

Answer. I am pretty confident they never did; they had too much respect for General Fry.

Question. Do you know Lieutenant Colonel Ilges?

Answer. I do not remember him.

Question. You say you took a great deal of interest in that Hoboken matter?

Answer. Yes, sir.

Question. Do you know who I mean by Colonel Ilges?

Answer. Yes, sir; but I don't remember ever seeing him.

Question. Did you ever hear a conversation between him and General Fry about the Hoboken matter?

Answer. I don't remember.

Question. Was Colonel Ilges at Washington on the 18th of March, and in that room at General Fry's office?

Answer. I could not swear to it.

Question. Was he the day before (March 17) in General Fry's office a couple of hours?

Answer. Cannot swear to it.

Question. If a conversation had ever happened between General Fry and Colonel Ilges in reference to this Hoboken matter you would recollect it, would you not?

Answer. At this distance of time I would only recollect it generally. I don't know whether I would recollect that particular conversation.

Question. Do you know that Colonel Ilges came to Washington on purpose to tell General Fry the full facts about that matter, and did he tell him?

Answer. From the papers I saw in connexion I judge he did. I could not swear he did. I don't remember seeing him.

Question. You judge he was at Fry's office?

Answer. Yes, sir.

Question. Why is it you don't recollect?

Answer. I don't recollect that particular thing.

Question. What time do you go to dinner or lunch?

Answer. I generally went when General Fry went, sir.

Question. Can you state what hour of the day you usually went to lunch?

Answer. I went at one hour one day and another hour another day. I always made it a point to be in the room while General Fry was there to attend

to his business; and when he went out to get his lunch I would go out to get mine, so as to be back in season.

Question. Shall we understand that General Fry was never in that room except when you were there with him?

Answer. No, sir; you shan't understand that.

Question. Shall we understand that you were always present when General Fry had any conversation, private or otherwise, with anybody else in that room?

Answer. I want you to understand that General Fry never sent me out of that room. I don't mean to say I was always there, every minute from 9 till 4.

Question. Did you ever hear any conversation on any subject between Theodore Allen and General Fry on any day or any year?

Answer. I could not swear I did.

Question. Did you write any despatch for General Fry March 24?

Answer. It would be impossible for me to tell you.

Question. Did you ever write a despatch for General Fry directing Colonel Ilges to turn over \$54,000 to Theodore Allen?

Answer. I cannot answer that question; I cannot swear that I did.

Question. Did you ever write an answer to a despatch received from Theodore Allen in reference to that money?

Answer. I cannot swear that I did.

Question. Were you ever present at any conversation between General Baker and General Fry with reference to that Hoboken matter?

Answer. I cannot swear to that, sir.

Question repeated. I remember a conversation, but don't know whether it was on that subject. At this date I am not sufficiently certain; of course I say not.

Question. Has your attention ever been called to this matter until now within a few days?

Answer. My attention was called to it by reading the proceedings of Congress.

Question. Who subpoenaed you?

Answer. General Fry requested me to come here.

Question. Where did he make that request?

Answer. By telegram to Philadelphia.

Question. When?

Answer. Day before yesterday.

Question. When did you see General Fry before that?

Answer. Don't think I have seen him for a year.

Question. When did you come here?

Answer. I came here night before last; I came as I got that despatch.

Question. Where have you been staying?

Answer. At Willards' hotel.

Question. Where did you live before you were a clerk in General Fry's office?

Answer. I lived in Philadelphia.

MONDAY, June 18, 1866.

DANIEL CARPENTER sworn and examined.

By General JEFFRIES:

Question. What is your place of residence, your occupation and profession?

Answer. Inspector of police in the city of New York.

Question. Are you acquainted with Theodore Allen?

Answer. Yes, sir.

Question. Are you acquainted with his reputation for truth and veracity?

Answer. I think I am.

Question. Is his reputation for truth and veracity good or bad?

Answer. In my judgment it is bad.

(Answer objected to by Mr. Hotchkiss.)

Question. You say in your judgment it is bad; state what means you have had of informing yourself upon which you predicate that judgment.

(Question objected to by Mr. Hotchkiss, as calling for the very thing which in every court is excluded.)

Question repeated and the following words added: "Please notice that no particular fact for or against Allen is called for by this question."

(Question still objected to, and objection overruled by the committee.)

Answer. My position in the police department is next in grade to that of superintendent. In 1857 I was deputed by the superintendent of police to get up at that time a detective force in New York. From that day to this, I have had, more or less, a supervision over that force. I am in constant intercourse with it daily, together with captains of police, sergeants, and detectives generally throughout the city. My opinion of Allen's character is predicated upon their general reports until within two or three years back, and upon knowledge which came to me through these sources. I know nothing personally whatever.

Question. From your knowledge of his reputation for truth and veracity, would you believe him under oath?

(Question objected to by Mr. HOTCHKISS on the ground that the only reputation specified by the witness, of which he has knowledge, is that reputation which the law excludes and disallows for this purpose; and further, it is objected that the evidence already given should be excluded for the reason that it appears affirmatively that the witness has no knowledge of that general reputation which alone is admissible as a foundation to his answer.)

The CHAIRMAN. Before determining the point, the committee will ask the witness the following question:

Question. Are you in doubt or not upon the matter as to whether you are acquainted with the general reputation of this witness for truth and veracity?

Answer. I am not.

Question. State whether you are acquainted with that general reputation or not.

Answer. I am only acquainted with it as from the sources I originally stated I obtained it from.

The CHAIRMAN. Please answer the question directly.

WITNESS. I am acquainted with it.

Question. You may now answer the question whether you would believe him under oath.

Answer. I would not, uncorroborated by other testimony.

(Answer objected to by Mr. HOTCHKISS, on the ground that by all the authorities it is an incompetent answer, and never received for any purpose against a witness sought to be impeached; and, further, an answer which has always been decided as failing entirely to impeach or affect the witness. Objection overruled.)

Cross-examined by Mr. HOTCHKISS:

Question. How long have you lived in New York?

Answer. Thirty-seven years.

Question. Have you always been a policeman as long as you have been in New York?

Answer. No, sir.

Question. How long have you been a policeman?

Answer. Nearly nineteen years.

Question. What were you before that?

Answer. I was a jeweller by trade.

Question. Do you mean you were the proprietor of a jewelry shop?

Answer. No, sir; I served my time with a jeweller, and subsequently worked as a journeyman.

Question. Where did you serve your time?

Answer. With Wilmot, Maffit & Curtis, in New York.

Question. For whom did you work as journeyman?

Answer. With Canfield & Bliss, with Kohler & Bassford, and with Grinnell & Co.

Question. How many years did these engagements in working for these men cover?

Answer. From 1837 to 1848.

Question. For how long a time did you ever work for any one of them?

Answer. Six years.

Question. Did you go from a journeyman in the jewelry trade to the police?

Answer. Yes, sir.

Question. Were you ever in any business except working in the jewelry trade and the police?

Answer. No, sir.

Question. How long have you been on the Metropolitan police?

Answer. Since its formation, in 1857.

Question. How many times have you taken the oath or been sworn in as a member of that force?

Answer. But once—in 1857.

Question. Was it a part of that oath that you were never to drink ardent spirits while you were a member of the force?

Answer. No.

Question. Have you never taken an oath that you would not drink liquor while a member of that force?

Answer. No.

Question. Have you never taken any pledge of that kind?

Answer. No.

Question. Is it not customary to require such a pledge?

Answer. No.

(General JEFFRIES objected to this course of examination as irrelevant.)

Question. Is it not a part of the regulation or law of the police force of New York that members of that force are not to drink?

Answer. No, sir.

Question. Are you in the habit of drinking to excess?

Answer. No, sir.

Question. Have you not been in the habit up to this time of becoming intoxicated frequently?

Answer. No.

Question. Do you mean to say you never have recently been intoxicated?

Answer. I do.

Question. Have you ever had any personal difficulty with Theodore Allen?

Answer. Never in my life.

Question. Did you have a fight with him in Leonard street?

Answer. No.

Question. Did you take off your coat, when intoxicated, to fight with him?

Answer. No.

Question. Do you know of the occasion to which I refer?

Answer. I do not.

Question. Were you ever in a saloon on Leonard street with Theodore Allen and several others, kept by a man named Murphy?

Answer. I have no recollection of it.

Question. Is that all you mean to say?

Answer. That is my answer to your question.

Question. You make it no stronger than that you do not recollect?

Answer. I do not know that I can.

Question. What is the reason you cannot say positively, one way or the other?

Answer. I thought I had answered positively until you put the question the second time. I do not believe I was there.

Question. Were you in the saloon on Leonard street, kept by a man of the name of Murphy, when you took off your coat to fight with Allen?

Answer. I never did such a thing.

Question. Did you do it there at any time?

Answer. No.

Question. Were you ever in the place referred to when you had any difficulty with Allen?

Answer. No, not to my knowledge.

Question. Is that as strong as you mean to state it?

Answer. That is as strong as I mean to state it.

Question. Were you ever in the place referred to, with Allen and others, when you were under the influence of liquor?

Answer. Not to my knowledge, nor do I believe I was.

Question. Do you now testify that you were never in Murphy's saloon, in Leonard street, and had a fight with Theodore Allen?

Answer. I do.

Question. What do you mean by "a fight?"

Answer. I do not know what you mean.

Question. Do you mean to be understood that you never in that saloon had a personal battle or contest with Theodore Allen?

Answer. I do, unless it was possibly when I was there to arrest him for some act.

Question. Were you ever there to arrest him for anything?

Answer. Not to my knowledge.

Question. Why do you say unless you were there to arrest him for some act?

Answer. Because that would be the only way I ever could have had a contest with him.

Question. Do you know Daniel Horrigan?

Answer. I did.

Question. Where is he now?

Answer. He is dead.

Question. Do you testify that Daniel Horrigan did not come and part you and Allen in Murphy's saloon on the occasion I refer to?

Answer. I have no recollection of any such occurrence, nor do I believe it ever took place.

Question. Is it not true that at the place specified—Murphy's saloon, Leonard street—you took off your coat and laid it on the bar to fight Allen, and that you did fight him, and got badly whipped?

Answer. No, that is not true.

Question. Do you know what occurrence this question refers to?

Answer. I have no idea. I have no recollection of any such occurrence ever having taken place.

Question. Can you account for your forgetting, if it ever did take place?

Answer. No.

Question. Do you intend in your answers to convey the idea that you had heard any man connected with the detective force speak against Theodore Allen?

Answer. Yes.

Question. Will you name to me one man who is living now, who was ever connected with the detective force, whom you have heard speak against Theodore Allen?

Answer. I have heard Philip Farley speak against him. I have heard him speak of his general character.

Question. Do you mean that you have heard him speak of his truth and veracity?

Answer. Yes.

Question. When was that?

Answer. Recently; within a few days.

Question. Name the time and place.

Answer. I cannot name the time. It was in my office.

Question. Was it within three days?

Answer. Longer ago than that; perhaps within a week.

Question. Had you then received any word in reference to Theodore Allen's being here?

Answer. I had received a subpoena to come here.

Question. How long after you received that was it that you heard Farley speak of Allen's reputation?

Answer. I now think it was before; I am not certain; it was within two or three days at any rate.

Question. Have you ever heard any other person connected with that force that you can name speak of his truth and veracity?

Answer. I have heard Inspector James Leonard speak of it often, and recently I have heard him—since the subpoena came to me.

Question. When did you first hear him speak of it?

Answer. I cannot say when, but several years ago; not particularly of his truth and veracity, but of his character as a man.

Question. Did you say you heard Inspector James Leonard speak of his character for truth and veracity?

Answer. I cannot say I did of those two terms, but of his general character.

Question. When do you now state you first heard James Leonard allude to Theodore Allen's reputation for truth and veracity?

Answer. I cannot exactly name the date. I know we were frequently talking about it.

Question. But you never heard him speak of his truth and veracity until after this subpoena came to you?

Answer. No.

Question. Can you name any other person you have heard speak of Allen's character for truth and veracity?

Answer. I do not remember any.

Question. Do you know Mr. Kennedy?

Answer. Yes.

Question. Is he your chief?

Answer. Yes.

Question. Has he lived in New York a long time?

Answer. Yes.

Question. Do you know whether he was subpoenaed by General Fry?

Answer. I do not know, but I understood that he was.

Question. Have you ever heard him speak of Allen's truth and veracity?

Answer. Recently I have.

Question. Have you heard that as long ago as you have heard Leonard speak of it?

Answer. Yes.

Question. Why did not you remember it at the time I asked you if you knew any other?

Answer. I did not remember it at that time.

Question. Have you ever heard Mr. Kennedy speak against Allen's character for truth and veracity?

Answer. No.

Question. Have you ever heard him say that he would believe him as quick as any man he knew?

Answer. No.

Question. Have you ever heard him say he would believe him anywhere, or that in substance?

Answer. No.

Question. How many men did you go to before leaving New York to inquire whether they knew anything against Allen?

Answer. Only two or three.

Question. Name those you went to.

Answer. I will name Captain Petty, Mr. Farley, and Mr. Leonard.

Question. At whose request did you go?

Answer. My own.

Question. Did anybody apply to you to do it?

Answer. No.

Question. You went to them as a volunteer?

Answer. I did.

Question. Are any of them here?

Answer. Captain Petty is here. With the permission of the committee I wish simply to state that I went to these men for this reason: Having been subpoenaed here, I knew something of the rules of evidence, and that the question would probably be asked me, "Who I had heard speak of Allen's character for truth and veracity?" Presuming that that question would be asked me, I went to these parties so as to be able to answer the question.

Question. Is that the only reason why you went to them?

Answer. That is the only reason.

Question. Have you ever been called to impeach any man's character before?

Answer. Yes.

Question. How many times?

Answer. Once.

Question. Have you ever heard any man examined to impeach character?

Answer. I have.

Question. And you knew this question was likely to be asked, and therefore you went to see these men, so that you could answer it?

Answer. Yes; that one general question.

Question. Did you know from attending courts that the legal question asked of a witness always is, What he has heard before the controversy or litigation commenced, or the subpoena was served?

Answer. No.

Question. You thought it was an honest thing, after you were subpoenaed as a witness to impeach Allen, to go round and ask persons what they thought of him, for the purpose of being able to answer the question?

Answer. That was my object. It was simply for the purpose of being able to answer the question if I was asked.

Question. You thought that was an honest transaction?

Answer. I did, and do.

Question. Do you know Provost Marshal Earhart?

Answer. Yes; I have heard of the gentleman; I do not know him.

Question. Did you tell him to get some men to go and see these men?

Answer. No, sir.

Captain JEREMIAH PETTY sworn and examined.

By General JEFFRIES:

Question. What is your profession and occupation?

Answer. Captain of the police, fifth precinct, New York city.

Question. Do you know Theodore Allen?

Answer. Yes, sir.

Question. Are you acquainted with his reputation for truth and veracity?

Answer. Yes, sir.

Question. Is his reputation for truth and veracity good or bad?

Answer. From his general reputation, his reputation for truth and veracity is bad.

Mr. HOTCHKISS moved to strike out the testimony of this witness, on the ground that his last answer is not a competent one.

By the CHAIRMAN :

Question. For the sake of understanding the exact force of the answer, the committee will ask this question of the witness : You have stated that you are acquainted with the general reputation of the witness Allen for truth and veracity. State what that reputation is among his neighbors in the community in which he lived.

Answer. It is bad.

(Motion to strike out evidence overruled.)

Cross-examined by Mr. HOTCHKISS :

Question. How long have you lived in New York ?

Answer. I was born there.

Question. When did you come to this city in answer to your subpoena ?

Answer. Saturday morning.

Question. In company with whom ?

Answer. With Inspector Carpenter.

Question. Who gave you the first information that you were to come here ?

Answer. The first I knew was receiving a despatch from the central office to come to the office.

Question. From whom ?

Answer. I do not know.

Question. Is that central office Mr. Carpenter's place of business ?

Answer. Yes, and Mr. Kennedy's.

Question. When did you receive that despatch ?

Answer. I think it was on the other side.

Question. Did you go at once ?

Answer. I went as soon as I arrived at the station-house. I was away at the time.

Question. Who did you see there ?

Answer. I saw Superintendent Kennedy.

Question. Did you also see Mr. Carpenter ?

Answer. I think I did.

Question. Who informed you there was a subpoena for you ?

Answer. Superintendent Kennedy said there was a telegraphic despatch.

Question. From whom ?

Answer. From Mr. Ordway. It think it is signed by him.

Question. Did you talk to Superintendent Kennedy about this ?

Answer. Not about giving evidence.

Question. Did you talk about Allen ?

Answer. Yes, sir.

Question. Who else did you talk with about Allen before you left home ?

Answer. I think I talked with Inspector Leonard, with Mr. Carpenter, and with George Elder, one of the detectives.

Question. Did you go to see anybody else before you left ?

Answer. No, sir, I did not go to see them. They were all in the office.

Question. Then you started with Mr. Carpenter to come here ?

Answer. Yes, on Friday.

Question. When you got here who did you see?

Answer. I went to a hotel, and did not see anybody.

Question. Have you seen General Fry since you have been here?

Answer. Yes, sir, on Saturday.

Question. Where did you see him?

Answer. At his office.

Question. Have you ever been indicted?

Answer. I have not.

Question. Have you ever been arrested?

Answer. I have never been arrested.

Question. Have never been charged with any criminal offence in reference to lotteries?

Answer. No, sir.

Question. Have you been in the lottery business?

Answer. I have.

Question. How long?

Answer. My father kept a lottery office under the State laws of New York. I was brought up to it. It is impossible for me to say how long.

Question. Have you always been in it?

Answer. No, sir.

Question. Has your business, among other things, been to sell lottery tickets to negroes?

Answer. I have sold lottery tickets to negroes.

Question. And to negro wenches?

Answer, Yes, sir.

Question. Has that been the bulk of your business?

Answer. No, sir.

Question. Was it extensively your business?

Answer. I have not been in the lottery business for twelve or fourteen years.

Question. I ask you whether your lottery office was not located in a neighborhood exclusively occupied by negro wenches?

Answer. No, sir.

Question. Where was your office?

Answer. On the corner of Chatham square and Catherine street.

Question. Did not you have an office in West Broadway?

Answer. Never.

Question. Do you mean to say you have not sold lottery tickets for twelve or fourteen years?

Answer. I have been married for twenty-five years. I was in the lottery business for about two years after I was married from sheer necessity. I got out of it as soon as I could, and since that time have not touched it. I have not been indicted for that or anything else.

Question. Do you recollect an occurrence that happened at Spring Street hill on the occasion of a primary election some time ago?

Answer. Yes, sir; it was reported to me by an officer under me.

Question. Were you handled pretty roughly there?

Answer. I was not there. It was reported to me by an officer sent by me.

Question. How long have you known Theodore Allen?

Answer. I think since about last January.

Question. Did you go up to him the first time you knew him, and introduce yourself to him, and shake hands with him?

Answer. No, sir; I did not.

Question. How did you know him; did anybody else introduce you to him?

Answer. I was not introduced at all.

Question. Did you introduce yourself?

Answer. No, sir.

Question. Do you mean to say that previous to a week ago you never heard any person whom you can name speak against Theodore Allen's character for truth and veracity?

Answer. Yes; a man by the name of Anderson spoke to me about him—a lawyer; I do not know his first name.

Question. Had he been employed against Allen?

Answer. Not that I know of.

Question. When was that?

Answer. That was last Friday. That was the first time he spoke about him in respect to his truth and veracity. I have heard him speak of his general character before.

Question. Then what you have heard any one say as to Allen's truth and veracity has been since this subpoena went over there?

Answer. I heard others speak of it, but I cannot name them particularly now.

Question. Where is that Mr. Anderson?

Answer. I do not know where he lives. He practices at the Tombs, and at the general sessions.

Question. Where did you have your interview with him?

Answer. On the stoop of the court of general sessions. I do not know where his residence or his office is.

The examination of this witness having been closed the following letter was placed in evidence by Mr. HOTCHKISS :

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,
Washington, D. C., September 24, 1863.

SIR: Your letter of the 19th instant in regard to the case of Hopson, a deserter, in whose behalf a writ of *habeas corpus* was issued, has been received.

In reply, I have to state that I desire you to appear in the case on its being brought before the supreme court and see that the provost marshal files the certificate under the oath required by the act of March 3, circular No. 85, (which please find enclosed,) the principles of which I would thank you to comply with.

I am, sir, very respectfully, your obedient servant,

JAMES B FRY,
Provost Marshal General.

Hon. R. CONKLING,
United States District Attorney, Utica, N. Y.

No other witness on the part of General Fry being at hand, Mr. Conkling introduced, out of order, the following witnesses :

SHERIDAN SHOOT sworn and examined.

By Mr. HOTCHKISS :

Question. Where do you reside?

Answer. In New York.

Question. How long have you resided in New York?

Answer. In the neighborhood of twenty years.

Question. What is your business?

Answer. I am now a collector of internal revenue for the 32d collection district, a part of the 4th congressional district.

Question. By whom were you appointed?

Answer. By Mr. Lincoln.

Question. How long have you been collector?

Answer. Since the passage of the internal revenue law.

Question. Have you a wide acquaintance in New York city?

Answer. Yes, sir.

Question. Do you know Theodore Allen?

Answer. Yes, sir.

Question. How long have you known him?

Answer. I think for five or six years—perhaps more.

Question. Has he lived there during that time?

Answer. I think he has.

Question. Have you known him pretty well during all the time?

Answer. Yes, sir.

Question. Have you known people—neighbors and others—with whom Allen is well acquainted, and who are well acquainted with him?

Answer. Yes, sir; I know a great many who know him.

Question. Are you acquainted with the general reputation of Theodore Allen for truth and veracity?

Answer. I am.

Question. Is that reputation good or bad?

Answer. I know nothing against his reputation for truth and veracity.

Question. Will you state, from all you know of his general reputation for truth and veracity, whether you would believe him under oath or not?

Answer. I should, unquestionably.

Question. Do you know any man whom you would believe under oath more implicitly than you would Theodore Allen?

Answer. I do not know as I do.

Cross-examined by General JEFFRIES:

Question. You regard Theodore Allen as one of the most reliable men of your acquaintance, do you?

Answer. For truth and veracity, I do.

Question. You have never heard his truth and veracity called in question by anybody?

Answer. Not that I know of.

Question. Would you have remembered it if you had?

Answer. I think I should.

Question. Where did you first become acquainted with him?

Answer. In the city of New York; I cannot tell in what building or on what street.

Question. Where is the first place you remember of seeing him?

Answer. That I could not answer; I am not prepared to say where I first saw him.

Question. Do you know what has been his avocation, his profession, or business?

Answer. I know something of his business.

Question. As you understand it, what has been his calling or avocation?

Answer. Furnishing troops to the army.

Question. Will you look at that paper (exhibiting paper to witness) and say whether you have ever seen it before?

Answer. I do not know that I have.

Question. Do you know the name of the person who signed that paper?

Answer. Yes, sir; I know him.

Question. Do you know anything of the fact to which that paper relates?

Answer. No, sir.

Question. When did you last see Theodore Allen before you met him on this investigation?

Answer. On the train last evening.

Question. Who subpoenaed you as a witness?

Answer. I do not know the gentleman's name. I do not know who I was subpoenaed by.

Question. Where were you when that paper was served on you?

Answer. I was in my office in New York.

Question. Have you ever heard the reputation of Theodore Allen, for truth and veracity, discussed one way or the other?

Answer. I have.

Question. Where was that discussion?

Answer. I could not state precisely.

Question. Who were discussing that question?

Answer. I do not know that I can swear positively.

Question. When was it?

Answer. I cannot tell the time exactly.

Question. If the question were discussed there were two sides to it, some parties affirming the reliability of the witness and others his unreliability, were there not?

Answer. Not that I know of. I have heard it discussed on several occasions, but I cannot say when or where. Such discussions frequently arise in a matter of business as to the reliability of particular parties.

Question. Can you remember the name of any person with whom you discussed that subject?

Answer. I think I could, but I should be unwilling to swear at this time as to any particular person.

By Mr. HOTCHKISS :

Question. On these occasions you have referred to, arising in business in which observations have been made about Allen, what have been the statements you have heard in reference to his unreliability?

Answer. I have known Allen politically and have known him socially, and the question arises very frequently among gentlemen as to the reliability of certain parties, and among others I have heard that of Allen spoken of. I have frequently heard him spoken of as a man of his word.

James W. BOOTH sworn and examined.

By Mr. HOTCHKISS :

Question. Do you reside in New York?

Answer. I do; within about one hundred feet of where I was born.

Question. What is your business?

Answer. Dyeing.

Question. What public offices have you held?

Answer. I have been a trustee of public schools some sixteen or seventeen years. I was appointed last year one of the commissioners of the assembly fire department, and I resigned about three months after.

Question. You have been in business about how long?

Answer. I commenced business when I was twenty years of age. I am now about forty-four.

Question. Have you a very wide general acquaintance in the city of New York?

Answer. I am pretty well known in the city.

Question. Do you know Theodore Allen?

Answer. I do.

Question. For how long have you known him?

Answer. For some eight or ten years; probably longer. I have known his father probably for thirty years.

Question. How near has Theodore Allen lived to you?

Answer. He lived for a long time within a few blocks of me. He has resided in the same assembly district, but a little further off.

Question. Are you acquainted with the general reputation of Theodore Allen; is he a man of truth and veracity?

Answer. I am.

Question. What is his reputation, good or bad?

Answer. I should say good.

Question. Would you believe him on his oath?

Answer. I would undoubtedly.

Cross-examined by General JEFFRIES:

Question. What have you ever heard said by which you are enabled to judge of his general reputation as regards truth and veracity?

Answer. I never heard it questioned.

Question. Have you ever heard anything said one way or the other?

Answer. No, sir, I never have.

Question. Then that question has never been discussed in your presence?

Answer. No, sir.

Question. You do not, then, undertake to state what the opinion of your neighbors, or other people in New York is, but simply state your own opinion?

Answer. I give it as my own opinion, and from the opinions of others with whom I am intimately associated.

Question. Who were these persons?

Answer. Those within the block in which I live, and a number of others in that district.

Question. Have you ever heard them say anything as to Allen's reputation for truth and veracity?

Answer. No, sir; I never did.

Question. Then it was not from his general reputation that you spoke?

Answer. No, sir.

Question. Who did you get the idea from?

Answer. It is mostly my own. As a citizen, I have looked upon him as a person whose word I would take at any time.

Question. You are a politician, are you not?

Answer. I do not know, I have always taken some little part in politics as a citizen.

Question. You take a good deal of interest in the politics of the city?

Answer. I feel a good of interest in them.

Question. And have taken a pretty prominent part in the arrangement of the politics in your part of the city, have you not?

Answer. I have endeavored to do my duty.

Question. Mr. Allen is of the same political opinion as yourself?

Answer. He is.

Question. Have you worked together in certain political arrangements for the city?

Answer. For the last three years we have been in the same election district.

Question. Have you ever employed him to do any business in political matters?

Answer. No, sir.

Question. Have you ever opposed each other in any way.

Answer. No, sir; I do not know that we have.

Question. Has there been any intimate relation between you and Allen in the arrangement of political affairs?

Answer. No, sir.

By Mr. HOTCHKISS:

Question. Is there any connexion, politically, between you and Allen, except that you have been in the same assemblage district, and both belong to the same Union party?

Answer. None, whatever.

Lieutenant Colonel WRIGHT RIVES (called for General Fry) sworn and examined.

By General JEFFRIES :

Question. What is your present profession and occupation ?

Answer. I am an officer of the army—at present one of the secretaries to the President.

Question. Were you formerly a staff officer of General Dix, in New York city ?

Answer. I was.

Question. During that or any other time, did you make the acquaintance of Theodore Allen ?

Answer. I know him.

Question. Are you acquainted with his general reputation for truth and veracity in the community where he lives ?

Answer. I will have to couple my answer with that to another question. While in New York I became acquainted with very few citizens, consequently my answer will not be derived, to any great extent, from an acquaintance, except with military and police officers in New York.

Mr. Hotchkiss objected to any further question being asked the witness, on the ground that he had disclosed his incompetency as an impeaching witness.

By the COMMITTEE :

Question. You understand what is meant by the expression "general reputation" as used in the question. Please answer the question directly, whether you are acquainted with the general reputation for truth and veracity of Theodore Allen ?

Answer. I am acquainted with his general reputation for truth and veracity in New York, but I would like to accompany the answer with this explanation : I was General Dix's staff officer for over a year. During that time I performed various military duties, and became acquainted with Theodore Allen. As a general thing I do not know the men Allen associates with, as they are in an entirely different sphere from my associates. Hence, although living there, at that time, I did not become acquainted with his friends who are living there.

(Objection overruled.)

By General JEFFRIES :

Question. What is his general reputation in the community where he lives for truth and veracity ?

Answer. Bad.

Cross-examination by Mr. CONKLING :

Question. Where is your residence ?

Answer. In Prince George's county, Maryland ; I am now residing in Washington.

Question. How long have you been stationed in Washington ?

Answer. Since the first part of June, a year ago.

Question. You have never been a resident of New York city ?

Answer. No, sir.

Question. But you were assigned there on duty temporarily with General Dix ?

Answer. Yes, sir.

Question. Where did you reside in New York at that time ?

Answer. Most of the time at 55 Bleecker street, two or three doors from headquarters Department of the East.

Question. Did you during your sojourn in New York become generally acquainted with the community of New York ?

Answer. I was introduced to persons every day from different parts of the city.

Question. Men you met for business purposes?

Answer. Yes, sir, and socially.

Question. Did you make a great many social acquaintances?

Answer. Yes, sir; I made a great many social acquaintances there?

Question. Did you become acquainted with a man by the name of Mills?

Answer. I think I did; I recollect a circumstance with which his name is associated.

Question. Was this man Mills arrested?

Answer. I could not tell, positively.

Question. Were you acquainted with a man by the name of Lee?

Answer. Yes, sir.

Question. Was he sent to Fort Lafayette?

Answer. Yes, sir.

Question. Did you ever hear Lee speak of Allen.

Answer. If I did, I cannot recollect the conversation.

Question. Will you name any person who you ever heard speak against Theodore Allen's truth and veracity?

Answer. I name John A. Dix, Major Joline, Charles G. Halpin, and Captain Barstow.

Question. Are these on General Dix's staff?

Answer. Yes, sir; I have often heard Superintendent Kennedy speak of him.

Question. Did Mr. Kennedy, in your presence, ever speak against Theodore Allen's truth and veracity?

Answer. I am very confident he did.

Question. Did he speak of it from his personal knowledge?

Answer. I imagine he spoke of it from knowledge derived from his subordinates.

Question. Are you very confident you heard him speak against Allen's truth and veracity?

Answer. Yes, sir; I am.

Question. Can you name any other person, not a member of General Dix's staff, you have heard speak against his truth and veracity?

Answer. I think I have heard John Young, captain of police, speak of it.

Question. Are you sure you heard John Young speak against his truth and veracity?

Answer. Not absolutely sure; that is my best recollection. I have heard several in Mr. Marshal Murray's office, but I cannot remember the names.

Question. Do you mean to be understood that you ever heard Marshal Murray reflect upon Theodore Allen's truth and veracity?

Answer. No, sir; not the marshal himself.

Question. Was there a controversy to which Lee, the man of whom I have spoken, was a party, in reference to recruiting?

Answer. Yes, sir.

Question. At Lafayette Hall?

Answer. Yes, sir.

Question. Were these statements made in reference to that matter?

Answer. Yes, sir; in reference to Lafayette Hall and other places, and in reference specially to General Spinola.

Question. Was Theodore Allen let out on his parole from Fort Lafayette?

Answer. I think he was.

Question. Was he before he went also paroled?

Answer. I cannot recollect.

Question. Can you tell whether he kept his parole punctually at all times?

Answer. He came over to the office.

Question. Can you tell whether he was finally discharged without any charges having been made against him?

Answer. No, sir; I do not know whether he is discharged now or not.

Question. Don't you know that this man Lee, of whom I have spoken, did the thing for which Theodore Allen was arrested?

Answer. No, sir; I do not.

Question. Do you know whether Lee was ever arrested or tried?

Answer. He was arrested for some offence; I do not think he was ever tried.

Question. Do you know that Lee fled the country, and broke his parole and bond?

Answer. No, sir.

Question. Do you know whether he did or not?

Answer. He went to Canada, and came back again.

Question. Do you know whether he is in the country now, and where?

Answer. I do not; I saw him, I think, not more than five months ago, certainly since I have been in Washington.

Question. Do you mean to say that outside of what was said in reference to these recruiting matters, you have knowledge of what was the reputation of Theodore Allen in New York?

Answer. No, sir.

Question. Are you sure you ever heard Mr. Kennedy say anything about Allen's truth and veracity?

Answer. I am very confident I have.

GEORGE F. HOTCHKISS sworn and examined.

By General JEFFRIES:

Question. Where do you live?

Answer. In Washington.

Question. What is your office or business?

Answer. Constable.

Question. Do you know Theodore Allen?

Answer. Yes, sir.

Question. Are you acquainted with his general reputation for truth and veracity in the city of New York.

Answer. I have not known anything about him for the last five years; before that I do.

Question. Do you know what his reputation for truth and veracity was five years ago in the city of New York?

Answer. I do seven years ago.

Question. Were you seven years ago, when you left there, acquainted with his general reputation for truth and veracity?

Answer. Yes, I was.

Question. What was his reputation for truth and veracity three years ago in New York city?

Answer. It was bad.

Cross-examined by Mr. HOTCHKISS:

Question. Do you know General Fry?

Answer. Yes, sir.

Question. How long have you known him?

Answer. I have known him by sight for, I suppose, a year and a half. I never was acquainted with him personally.

Question. Have you talked with him.

Answer. Yes, sir.

Question. When?

Answer. To-day.

Question. Where?

Answer. In the War Department.

Question. Who got you to go there?

Answer. I was sent for by Colonel O'Beirne, deputy United States marshal.

Question. When did he send you there?

Answer. This morning.

Question. Did you go alone?

Answer. I did.

Question. Did he tell you what Fry wanted with you?

Answer. Yes, sir.

Question. Did you see general Fry in his office?

Answer. Yes, sir.

Question. Was anybody else present?

Answer. No, sir.

Question. Did he send you from his office here?

Answer. Yes, sir.

Question. With a sealed letter?

Answer. He sent a young man in the office who, I believe, brought a letter. I do not know who he was.

Question. How long were you with General Fry this morning, alone?

Answer. I suppose about ten or fifteen minutes.

Question. Did you stay down there?

Answer. I did.

Question. Where did you come from when you came to Washington?

Answer. From New York city.

Question. What was your business in New York?

Answer. I was in the sheriff's office part of the time, and a part of the time in the marshal's office.

Question. When you were in the sheriff's office, were you employed at the Tombs?

Answer. No; I used frequently to go up there.

Question. Did you use to act as hangman at the Tombs?

Answer. No, sir; never.

Question. Did you not cut the rope for the boy Rogers?

Answer. No, sir, I never did; I was not there at the time.

Question. How long were you in the sheriff's employ?

Answer. In the neighborhood of a year.

Question. What sheriff was that?

Answer. Sheriff Kelley.

Question. Have you ever been arrested yourself?

Answer. No, sir.

Question. Have you ever been indicted?

Answer. No, sir.

Question. No criminal complaint ever been made against you?

Answer. No, sir; not that I ever heard of.

Question. Were you a deputy marshal?

Answer. I was in the marshal's office, not a full deputy; I used frequently to serve writs, and was deputy marshal for that purpose; I had no appointment from him.

Question. Did you have any pay?

Answer. I had fees when I served writs.

Question. What was your position with the sheriff?

Answer. I had charge of goods and receipts; I was not deputy sheriff; I was deputy the same as I was with the marshal.

Question. Were you under pay from the sheriff?

Answer. Only when I served writs.

Question. Were you paid then by the sheriff or by the party?

Answer. By the sheriff.

General JEFFRIES stated that he here rested the testimony on the part of General Fry.

Mr. HOTCHKISS placed in evidence the following report:

On or about the 15th day of February, 1865, Colonel L. C. Baker, special agent of the War Department, desired to see me at his office in the Astor House, New York city. I called immediately upon him, and was by him informed that I was about to open a recruiting rendezvous at Hoboken, New Jersey. When I expressed my surprise at this information, coming through such a source, the colonel intimated to me that this office at Hoboken would be established for some special purpose, the nature of which he did then reveal to me. He further informed me that while at the War Department, in Major R. Williams's office, a few days previous, he had selected me from among the available officers of this post to be detailed for duty at Hoboken.

On the 18th day of February, 1865, I received the following order:

["Special Order No. 16."]

"HEADQ'RS GENERAL RECRUITING SERVICE, NO. 24 EAST FOURTH STREET,
"New York City, February 18, 1865.

"Captain Guido Ilges, 14th infantry, recruiting officer at New York city, will open a branch rendezvous at Hoboken, New Jersey, without delay.

"The regimental superintendent, 14th infantry, will increase his party for that purpose if necessary.

"By order of General Cooke:

"R. T. FRANK,

"Captain and Acting Ass't Adj't Gen'l."

Upon the receipt of this order I immediately went to Hoboken in search of a proper office, but was unsuccessful in this for several days. On or about the 25th of February, 1865, on my way to Hoboken, I met Colonel L. C. Baker in the street in the neighborhood of the Astor House, and was then and there by him informed that he had been at Hoboken, New Jersey, in person; that he had rented "Odd Fellows' Hall" and basement in same building, and that he wished me to start the office at this place at once. He further said that a Mr. Allen was there attending to the fixing up and cleaning of the rooms; that the said Allen was instructed by him to consult with me in regard to any improvements I might suggest, in order to successfully prosecute the recruiting business at said office. Colonel Baker at this time also informed me that the office was to furnish the means for the capture of several hundred bounty-jumpers; in other words that the office was to be a so-called "trap" for men who enlist, take the local bounty, and then desert.

I then informed the colonel that in order to carry out this plan successfully, it would be necessary for me to be furnished with special orders, giving me certain power, as the rules and regulations governing the recruiting service at that time would interfere with the plan and exclude the means proposed.

The colonel then requested me to see him again in the evening of the same day at his office, and to then inform him of the nature of the special orders I required. He also then stated that this plan was sanctioned by the Provost Marshal General, United States army, and that every step I would take while in the execution of the same would be sanctioned. During the day I met Mr. Allen, and was by him introduced to one Peter Riley and one Hughes, who were also, as Mr. Allen informed me, in the employment and confidence of Colonel Baker. These men informed me that the basement rooms at "Odd Fellows' Hall," Hoboken, had been rented by them by order of Colonel Baker, and that said rooms would be ready for use on the following day; that they were confident of my capturing 500 bounty-jumpers at the said office within a week.

According to appointment I visited Colonel Baker same evening; there were present, besides Colonel Baker and myself, the three men—Allen, Riley, and Hughes, and another gentleman by the name of Stanley.

I first told Colonel Baker that I had considered the conversation we had held in the morning, and that I had very serious objections to acting in the manner it was proposed I should. As an officer of the army I would, of course, obey orders, but that I would obey them under protest, and that until positive orders and instructions would be furnished me, I respectfully declined to act under his instructions. He then informed me that, during the day, he had seen General Hinks, the then assistant provost marshal general of this division, and that he was informed of the plan, and that he wished to see me on the following day at his (the general's) office.

I informed Colonel Baker that, as a recruiting officer, I was unable to muster in any volunteers, and that, in order to do this, I must first be placed on mustering duty. That, under the existing orders, I must exclude all citizen agents, bounty-brokers, and, therefore, also detectives from my office, unless they were the proper representatives of some locality for the purpose of paying bounties to accepted recruits; that I must have an additional

force of enlisted men at my office, and that provision for the subsistence of my guard, permanent party, and captured bounty-jumpers, must be made by him, as I had not funds on hand to meet these expenditures. This the colonel promised would all be attended to by him. I then assured the colonel that my unwillingness to serve only was caused by my fear to come in conflict with existing orders, but that as soon as I received the proper orders from the proper authority I would most willingly assist him in this matter. During this conversation Messrs. Allen, Riley, Hughes, and Stanley gave their opinion freely about different subjects of our conversation, and the plan above referred to was discussed by them in all its details.

February 27, 1865 I called upon General Hinks, the assistant provost marshal of this district, at his office; he informed me that the necessary orders would be issued to me at once; that I was to carry out the instructions of Colonel Baker. This latter order he gave to me verbally after he was informed by me that I was cognizant of all the details of Colonel Baker's plan. February 28, 1865, I received the following order:

[Special Orders No. 41.]

[Extract.]

OFFICE ASSISTANT PROVOST MARSHAL GENERAL,
Southern Division of New York, New York, February 28, 1865.

IV. By special authority from the War Department, Brevet Lieutenant Colonel Guido Ilgis, U. S. A., in addition to his present duties, is temporarily assigned to duty as mustering officer at Hoboken, N. J., and will muster volunteer recruits into the service of the United States at that place. Lieutenant Colonel Ilgis will make such arrangements for the temporary quarters of the recruits as may be necessary.

Lieutenant Colonel Ilgis will be subject to orders from this office, pursuant to directions from the office of the Provost Marshal General.

By command of Brigadier General Hinks.

H. T. BROWNSON, A. A. G.

On the same day I called upon Colonel Baker and informed him that I was ready to carry out his instructions, which he gave me as follows:

I was to muster in certain recruits as United States volunteers, pay them their bounties, and then allow them to escape. That also large amounts of hand-money were to be paid to the brokers who furnished or presented these recruits.

That I must keep the object of my proceedings secret until I should have succeeded in my undertaking.

That it was left to me to decide in regard to the number of such recruits to be paid their bounty, and then to be allowed to desert from my office. That Messrs. Allen, Riley, and Hughes should be allowed presence in my office, as they were acting under his orders; that they would furnish the bounties and hand-money, as they were about to contract with certain localities in New Jersey for these credits.

That I must carry out the conditions of the first instructions until the arrangements were perfected for the capture of large numbers of these so-called bounty-jumpers.

Meanwhile I had opened a branch recruiting rendezvous at the place in Hoboken, in pursuance to Special Order 16, (see page 233,) in the legitimate way, and the recruits so obtained were enlisted into the 14th United States infantry.

On the 1st day of March I commenced mustering volunteers in pursuance of and in conformity with Colonel Baker's instructions, and continued doing so until the 10th day of March, 1865, as follows, viz:

On the 1st March, 1865, seven volunteers.

On the 2d March, 1865, four volunteers.

On the 3d March, 1865, eight volunteers.

On the 4th March, 1865, eight volunteers.

On the 7th March, 1865, five volunteers.

On the 8th March, 1865, eight volunteers.

On the 9th March, 1865, fourteen volunteers.

On the 9th of March I was informed by Colonel Baker that arrangements had been completed, and that on the following day, March the 10th, I was to muster in several hundred "bounty-jumpers," and to safely keep them in charge of a guard in the large hall of same building.

On the 10th day of March I mustered in and placed in charge of guard 183 so-called bounty-jumpers. They were kept at my rendezvous until March 13, and from thence transferred by steamer to Fort Lafayette, in charge of First Lieutenant Rife, 6th United States infantry, whom I furnished with a muster-roll of these men.

On the 1st day of March one sergeant and eighteen privates, 3d regiment Veteran Reserve Corps, reported to me in obedience to the following order, viz:

[Special Order No. 41.]

[Extract.]

OFFICE ACTING ASSISTANT PROVOST MARSHAL GENERAL,
Southern Division of New York, New York, February 28, 1865.

* * * * *

V. Lieutenant G. W. Limbacker, commanding company B, third regiment Veteran Reserve Corps, will detail one non-commissioned officer and twenty-four privates, to report to Brevet Lieutenant Colonel G. Ilges, United States Army, mustering officer at Hoboken, New Jersey, for duty as guards to recruits.

The Quartermaster's department will furnish the necessary transportation.

By command of Brigadier General Hinks.

H. T. BROWNSON,
Assistant Adjutant General.

Which order was endorsed as follows :

"Seventeen men are all that can be sent on this detail, as they are all the men at present not on duty with one sergeant and one corporal.

"G. W. LIMBACKER,
"Lieutenant, Commanding Company."

Though enlisting United States volunteers into the service, from and on the 1st day of March, I did not credit them to any locality until I received the following order :

OFFICE ACTING ASSISTANT PROVOST MARSHAL GENERAL,
Southern Division of New York, New York, March 2, 1865.

COLONEL : Brigadier General Hinks directs me to instruct you that all men mustered into the service by you must be credited to some district, and in making your daily report you will state the number credited to each district.

Very respectfully, your obedient servant,

H. T. BROWNSON,
Assistant Adjutant General.

Lieutenant Colonel G. ILGES,
14th U. S. infantry, Mustering officer.

Previous to the receipt of this communication, I had addressed the following letter to Captain Brownson :

MUSTERING OFFICE UNITED STATES ARMY,
174 Washington street, Hoboken, New Jersey, March 4, 1865.

CAPTAIN : I have the honor to represent that I have as yet not been furnished with the list of regiments to which the volunteers mustered by me are to be credited, and in consequence thereof I am unable to forward to your office the enlistment papers of the volunteers already mustered by me. I also respectfully request that a *written* order of General Hinks given to me by him *verbally*, and by him ordered to be furnished me on Thursday, the 2d day of March, 1865, has as yet not been received.

I will again state to you the points which (I understood the general,) were to be embraced in this order :

I. That I shall forward to your headquarters the returns of this office.

II. That I shall muster no recruits for colored troops.

III. That I shall make such arrangements for the temporary subsistence of recruits and guards as may be necessary.

As the plan of the provost marshal, United States army, for the execution of which I was ordered on mustering service to this point, with certain instructions will be carried out the beginning of next week, it is of the greatest importance that I should be furnished with the aforesaid order in writing at your earliest convenience, so that further delay and uncertainty on my part may not interfere with the successful carrying out of the projects of the Provost Marshal General United States army.

I remain, captain, very respectfully, your obedient servant,

GUIDO ILGES,

Capt. 14th U. S. infantry and B'vt Lieut. Col. U. S. A., Mustering officer.

Captain H. T. BROWNSON,

Acting Assistant Adjutant General, New York.

In answer to this letter, I received the following:

OFFICE ACTING ASSISTANT PROVOST MARSHAL GENERAL,
March 4, 1865.

COLONEL: Brigadier General Hinks directs me to acknowledge the receipt of your communication of this date, and in reply to inform you that recruits can be mustered for the following regiments New York volunteer infantry: 3d, 5th, 7th, 10th, and all above the 50th regiment to the 191st regiment. Also to the following organizations: 5th New York cavalry; 8th New York cavalry; 11th, 15th, 22d, 24th New York cavalry; 1st New York mounted rifles; 2d New York mounted rifles; 1st New York dragoons; 1st New York engineers; 5th New York independent battery.

The order referred to was sent by mail on the 2d instant.

Very respectfully, your obedient servant,

H. T. BROWNSON,
Assistant Adjutant General.

Brevet Lieutenant Colonel G. ILGES, *U. S. Army.*
Recruiting Officer, Hoboken, New Jersey.

P. S.—You will make the best possible arrangements for the interests of the government for the subsistence and quartering of the guards and recruits mustered by you.

H. T. BROWNSON,
Assistant Adjutant General.

Messrs. Allen, Riley & Hughes furnished the recruits with the local bounty. The amount was established by me at \$300, this being the amount of bounty paid elsewhere.

These gentlemen were permitted at and admitted to my office for the following reasons:

I. They came to me through Colonel Baker. They were recommended to me as the instruments of and in the confidence of the government.

II. They produced to me a document showing that they were the representatives of the city of Hoboken, New Jersey—the said document being a contract between them and the city council of Hoboken to fill the quota of said city.

III. They furnished me with a copy of the following telegraphic despatch, viz:

[Original by telegraph.]

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,
Washington, D. C., March 5, 1865.

Captain HARRY J. MILLS, *Provost Marshal, Newark, N. J.:*

Until otherwise ordered you are directed to allow credits for such men as Brevet Lieutenant Colonel Guido Ilges, captain 14th United States infantry, certifies to you are enlisted by him. He is recruiting at Hoboken. Inform Colonel Ely of this order. The case is special and confidential.

JAMES B. FRY,
Provost Marshal General.

In order to muster in volunteers as I was instructed to do, I had to obtain the money to be paid them as bounty and to brokers as hand-money, from some quarter, and these three men came to me with the sanction and in the confidence of the authorities and as proper representatives of certain localities; therefore I felt justified and still feel so under the then existing circumstances, that I was doing right and endeavoring to promote the interests of the government. Besides, Colonel Baker was fully aware of the manner in which the business in my office was transacted, as in conversation with him at different times, I informed him of everything in connexion with my office.

On the 10th day of March, 1865, when the aforementioned 183 bounty-jumpers were mustered in by me, and kept by me in confinement, and also on the following day I hesitated and declined to credit these men to any localities, but upon consideration and the reading of the orders received in regard to credits, copies of which are given with this report and made part thereof, and when the mayor of the city of Jersey City informed me that Colonel Baker had assured him that the credits allowed by me were "all right," I concluded to pursue the following course: To take charge of the \$300 bounty money of each one of these 183 recruits and to deposit the same in the national bank, subject to the order of the Provost Marshal General.

I considered it my duty, under the then existing orders regulating the mustering service that the bounty money of each one of the 183 recruits should either be paid into their own hands or should be deposited in my hands; at all events that this money should actually be paid by the parties who received the credits.

I thought then, and still think, that these men, if they were to be kept in the service without being proven deserters of other military organizations before their enlistment with me, were fully entitled to the amount of local bounty; but that if they were proven deserters, then the United States Treasury should be the recipient of the money.

Messrs. Allen, Riley & Hughes accordingly paid into my hands the sum of \$54,000, this being the amount of bounty claimed by me as due to 180 recruits. The said party were to pay into my hands \$900 more for the remaining three recruits, but they failed to do so, telling me upon my repeated application for this amount that it was not necessary for them to do so, as the amount in my hands (\$54,000) would be paid back to them in a few days by order of the Provost Marshal General.

This amount, \$54,000, was deposited by me in the National Broadway Bank, March 15, 1865. I immediately wrote to the Provost Marshal General, at Washington, D. C., asking for instructions whether to pay this amount to the recruits there in confinement, or to the commanding officer at Fort Lafayette, who had charge of these men, or whether I should turn it into the United States Treasury. In reply to this letter I received, on the 20th of March, the following communication:

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S OFFICE,
Washington, D. C., March 19, 1865.

COLONEL: I am directed by the Provost Marshal General to inform you that the credits of the men mustered by you March 11, 1865, at Hoboken, N. J., and credited to Jersey City at large, are disallowed, and that you will refund the money to the parties who advanced it.

I am, colonel, very respectfully, your obedient servant,

W. OWENS,
Captain 5th U. S. Cavalry, A. A. A. G.

Brevet Lieutenant Colonel GUIDO ILGES,
Mustering Officer, Hoboken, N. J.

Thinking that the Provost Marshal General might not fully understand this whole matter I deemed it my duty to write to him the following communication in explanation before paying back this money, viz:

RECRUITING SERVICE, 14TH INFANTRY,
163 Hester Street, New York City, March 21, 1865.

CAPTAIN: I have the honor to acknowledge the receipt of your communication of March 19th, 1865, informing me that the credits of men mustered by me March 11, 1865, at Hoboken, N. J., and credited to Jersey City at large, are disallowed, and instructing me to refund this money to the parties who advanced it.

I beg leave to state that no men were mustered by me on the aforesaid date; but I infer that this communication meant to say the 10th instead of the 11th March, 1865.

I would respectfully state that, on the said day four regulars were mustered by me, and that if their credits are not to be affected they should be excluded in your order. I mustered on the 10th day of March 183 volunteers for three years, so-called bounty-jumpers, and they were credited to Jersey City at large, with the exception of fifteen recruits who were credited to Clinton township, Essex county, fourth congressional district of New Jersey. I would further state that I have at my disposal the sum of \$300, local bounty, for each of these 183 recruits, and that I received this amount from Messrs. Allen, Riley & Co., who had contracted with the counties for these credits, and I would, therefore, respectfully request that you inform me whether or not I am to refund this money to these parties, or to the proper representatives of the places who received the credits. These 183 recruits were properly mustered into the service by me, and I credited them according to instructions and orders regulating the mustering service. None of these recruits have as yet been proven to have been credited before, and when I gave these credits I did so as a United States officer, believing that I was doing my duty and advancing the interest of the plan of Colonel Baker, sanctioned by the Provost Marshal General. I am informed that the county representatives who received these credits paid a large amount of premium to Messrs. Allen, Riley & Co., besides the \$300 local bounty; and as they have done so after having been informed by me of the correctness of these credits, I would respectfully call your attention to the fact that when these credits are disallowed, the said localities will lose a large amount of money paid out by them in good faith. I am not aware what amount of money was paid to Messrs. Allen, Riley & Co. for each recruit, and cannot even give a probable guess, as I only collected the usual amount from them, \$300, for each recruit, this being the amount of bounty paid to a recruit enlisted at Hoboken, New Jersey.

I would here add that Messrs. Allen, Riley & Co. are the parties who carried out the plan above referred to, and I only allowed them to be present in my office and to contract for these credits contrary to existing orders, after I had been assured by Colonel L. C. Baker, special agent of the War Department, that the whole proceeding was sanctioned by the Provost Marshal General United States army. I therefore respectfully request that you inform me at your earliest convenience, what disposition I am to make of the money above referred to.

I remain, captain, very respectfully, your obedient servant,

GUIDO ILGES
Capt. 14th Infantry and Brevet Lieut. Col. U. S. A., Recruiting Officer.
Captain W. OWENS,
5th U. S. Cavalry, A. A. A. G., Washington, D. C.

In reply to this letter of the 21st I received on the 24th, same month, the following reply :

WAR DEPARTMENT, PROV. MAR. GEN. OFFICE,
Washington, D. C., March 23, 1865.

COLONEL: I have the honor to acknowledge the receipt of your communication of the 21st instant, and in reply would state that the communication of the 19th instant, referred to, was intended to cover the cases of the 183 "so-called bounty-jumpers," and that the amount which you received for the purpose of paying bounties to these 183 so-called bounty-jumpers the Provost Marshal General directs be refunded to the parties who advanced it.

I am, colonel, very respectfully, your obedient servant,

W. OWENS, *Capt. 5th U. S. C., A. A. A. G.*

Brevet Lieut. Colonel GUIDO ILGES, U. S. A.,
163 Hester street, N. Y.

Messrs. Allen, Riley & Hughes, in company with the aforesaid Mr. Stanley, called upon me on the 24th of March, and they (seeming aware of the foregoing order) demanded of me \$54,000, and upon my refusal to give up this money to them until I could see Colonel L. C. Baker and ask his advice in the matter, they informed me that legal proceedings would be forthwith instituted in order to compel me to give up to them "their money."

I immediately called upon Colonel L. C. Baker, at his office, but being unable to see him then, I proceeded to the office of the United States district attorney, D. L. Smith, No. 12 Chambers street, and laid my case before one of the attorneys of his office, who advised me not to give up the money until I had further orders from Washington. I also called upon several other regular army officers in this city, and was by them advised to the same effect.

On the 25th of March, 1865, I was again sent for by Colonel L. C. Baker, and upon my arrival at his office I was shown by him a telegraphic despatch from the Provost Marshal General to him, directing him to order me to turn over the amount of money (\$54,000) held by me as a bounty for those 183 so-called bounty-jumpers to Messrs. Allen, Riley & Co.

After hesitating and waiting nearly one hour at Colonel Baker's office, I proceeded to the National Broadway Bank, accompanied by Messrs. Allen, Riley, Hughes, and Stanley, and there drew the following check, viz :

No. 24.]

NEW YORK, March 25, 1865.

National Broadway Bank, pay to Messrs. Peter Riley & Co., or bearer, fifty-four thousand dollars.
(\$54,000.)

GUIDO ILGES,
Capt. 4th U. S. Inf., and Brevet Lieut. Col. U. S. A., Recruiting Officer.

Which check I handed to Mr. Peter Riley in presence of the aforesaid gentlemen, who presented the same to the paying teller at the said bank and received \$54,000 in national currency therefor.

It is also proper for me to state that on the 17th of March, having received permission, I proceeded to Washington city, and in person related to the Provost Marshal General U. S. A., all the details connected with the office at Hoboken, the capture of these one hundred and eighty-three so-called bounty-jumpers, and the amount of money in my hands, asking at the same time for instructions in regard to the disposal of this money, to which he replied that further orders would be sent to me by mail.

I expressed to him my fear that at some future day I might be called upon for explanation why I had, at my office at Hoboken, acted contrary to existing orders and regulations governing the mustering service, and that I intended to ask for a court of inquiry, when the Provost Marshal General assured me that I had done my duty well, and only obeyed orders.

After the capture of these one hundred and eighty-three bounty-jumpers March 10, 1865, I immediately addressed communications to the proper authorities, asking to be relieved from duty at Hoboken, and received the following, viz :

[Special Order No. 49.]

[Extract.]

OFFICE ACTING ASSISTANT PROVOST MARSHAL GENERAL, &C.,
New York, March 13, 1865.

I. Brevet Lieutenant Colonel Guido Ilges, U. S. A., is relieved from mustering duty at Hoboken, New Jersey.

By order of the acting assistant provost marshal general.

H. T. BROWNSON,
Assistant Adjutant General.

And also the following :

[Special Order No. 23.]

HEADQUARTERS GENERAL RECRUITING SERVICE,
No. 24 EAST FOURTH STREET,
New York, March 14, 1865.

I. Brevet Lieutenant Colonel and Captain Guido Ilges, 14th U. S. Infantry, having reported to these headquarters that the object of establishing a branch rendezvous at Hoboken, New Jersey, having been accomplished, and that no more recruits can be gained at that place, it is hereby discontinued.

By order of General Cooke.

R. T. FRANK,
Captain and Acting Assistant Adjutant General.

NEW YORK, March 28, 1865.

The above is a correct statement in regard to the transaction of business at my mustering office in Hoboken, N. J., during March, 1865.

GUIDO ILGES,
Capt. 14th Inf. and Bvt. Lieut. Col. U. S. A.

CHARLES HENRY TRASK sworn and examined.

By Mr. HOTCHKISS :

Question. Where do you reside ?

Answer. No. 25 King street, New York.

Question. How long have you lived in New York ?

Answer. Since I was seven years old.

Question. What is your business ?

Answer. I am a butcher.

Question. For how many years have you been in business in New York ?

Answer. I have been at work since 1835. I have been in business for myself about six years.

Question. Have you a very general acquaintance in the community around you ?

Answer. Yes, sir.

Question. Do you know Theodore Allen ?

Answer. I have known him for seventeen or eighteen years.

Question. Do you know his father ?

Answer. I have but a slight acquaintance with his father.

Question. Are you acquainted with Theodore's general reputation for truth and veracity ?

Answer. Yes, sir.

Question. What is it, good or bad ?

Answer. It is good.

Question. Would you believe him on his oath from that reputation ?

Answer. Yes, sir.

Cross-examined by General JEFFRIES :

Question. Have you ever heard the question discussed as to Allen's character for truth ?

Answer. No, sir, not more than to have heard it said that it was good.

Question. Have you ever talked with anybody on that subject in New York as to his being a truthful man under oath ?

Answer. No, sir.

Question. Have you ever talked with anybody about his reputation as to what people say about him for truth ?

Answer. No, sir.

Question. When you say his reputation for truth is good, do you give that merely as your opinion ?

Answer. Yes, sir.

Question. You never have heard anybody say anything about it ?

Answer. No, sir.

By Mr. CONKLING :

Question. Did you ever hear anything said against Allen's truth and veracity ?

Answer. No, sir ; I never heard any man say anything against Mr. Allen. I was called on to give security for him, and I never asked him to indemnify me to the extent of one cent. That goes to show that I must have known him pretty well, and have had confidence in him.

TUESDAY, *June* 19, 1866.

WILLIAM G. ELDER sworn and examined.

By Mr. HOTCHKISS :

Question. Where do you reside ?

Answer. In New York city.

Question. What is your occupation ?

Answer. I am a detective officer of the metropolitan police.

Question. For how long have you lived in New York ?

Answer. Forty-odd years.

Question. Have you a very wide acquaintance in New York ?

Answer. I have been connected with the police department for seventeen years.

Question. Do you know Theodore Allen ?

Answer. I do, sir ; man and boy.

Question. For how many years have you known him ?

Answer. Fifteen or eighteen years.

Question. Are you acquainted with his general reputation for truth and veracity in New York ?

Answer. I am.

Question. Is his reputation good or bad ?

Answer. I consider it good.

Question. Would you believe him on his oath ?

Answer. I would.

Question. Would you have any hesitation whatever about it ?

Answer. None at all about believing him.

Cross-examined by General JEFFRIES :

Question. Have you ever heard the character of Allen for truth and veracity discussed ?

Answer. I have.

Question. Between whom was it discussed, and where ?

Answer. It was at the police headquarters within the last few days.

Question. As the question has been discussed at that place by these persons, of course there were different opinions expressed ?

Answer. No, sir ; but one opinion.

Question. Then it was a discussion where the parties were all on one side ?

Answer. It was a discussion of what Mr. Carpenter had said ; and the opinion was expressed that Mr. Carpenter had mistaken another man for Theodore Allen. He had asked if a certain gentleman did not know him frequently at a house on Church street. That was another man who was there.

Question. Allen is a man very well known, is he not ?

Answer. He is very well known.

Question. He is a man about whom the police would not be likely to be mistaken in confounding with anybody else, isn't he ?

Answer. No, sir.

Question. Who is the Carpenter you speak of ?

Answer. He is inspector of police.

Question. What position is that?

Answer. The principal officer of the police department is superintendent; the inspector is next in grade to him.

Question. Do you think that man would be likely to be mistaken about the identity of Allen?

Answer. Yes, sir; I am positive he is, as he is in a good many other things.

Question. When I asked you if you had ever heard the question of Allen's character for truth and veracity discussed, what do I understand you to mean as to the identity of the person of whose character you speak?

Answer. I mean Theodore Allen, in his character for truth and veracity.

Question. Have you ever heard that particular question discussed?

Answer. I have heard it talked of. I heard Mr. Carpenter make certain inquiries about Allen. I heard a number say that Allen's name had been called in question, and it was asked if they would believe him under oath. I heard the replies of several parties to that question that they would.

Question. Who did you hear those replies made by?

Answer. By Kelso, Bennett, Radford, Inspector Dilkes, and Captain Jourdan.

Question. Who asked that question?

Answer. I think it was Mr. Kelso.

Question. Do you know what gave rise to it?

Answer. I think I know. I am not positive. It was inquiries that Carpenter had made.

Question. Except on that occasion, did you ever hear Allen's character discussed?

Answer. Not that I am aware of.

Question. Do you base your testimony here in support of Allen's character on that conversation?

Answer. No, sir.

Question. Has that anything to do with it?

Answer. Nothing at all.

Question. Upon what, then, do you base your knowledge of Allen's general reputation for truth and veracity? Who have you heard say anything in regard to it?

Answer. I do not know as I have heard anybody. I speak from my own knowledge of the man.

Question. Then your answer is based upon your own opinion as to his character for truth and veracity?

Answer. Yes, sir.

Captain JOHN JOURDAN sworn and examined :

By Mr. HOTCHKISS :

Question. Where do you reside?

Answer. In New York city.

Question. How long have you lived there?

Answer. For a very long time.

Question. What is your official position?

Answer. Captain of the metropolitan police force.

Question. Have you a very wide acquaintance in New York?

Answer. I know a great many people in the city of New York.

Question. Do you know Theodore Allen?

Answer. I do.

Question. How long have you known him?

Answer. For, I should think, about ten years; it might be more.

Question. Are you acquainted with his general reputation for truth and veracity in the community where he lives?

Answer. I am.

Question. Is it good or bad?

Answer. Good.

Question. Would you believe him on his oath?

Answer. I would.

Cross-examined by General JEFFRIES:

Question. When did you leave New York?

Answer. Last night at 7 o'clock.

Question. What induced you to come here?

Answer. A subpoena from some person belonging to this committee; the chairman, I think.

Question. When did you get it?

Answer. I got it at my station-house I think, on Saturday at 2 o'clock.

Question. Did you get any other paper except a subpoena?

Answer. No, sir.

Question. Who served it on you?

Answer. A gentleman I saw here present.

Question. Did you have any conversation with him?

Answer. I did.

Question. Did you talk with him, or anybody else, as to the purpose of your going?

Answer. No; but I asked him if it would be possible to avoid going; that I did not want to go; I did not know what I had to do with the matter. He told me I would be obliged to go. That was all the conversation.

Question. How did he know you were obliged to go?

Answer. By what my subpoena said.

Question. When you came to Washington where did you stop?

Answer. At the Kirkwood House.

Question. Who did you first see and have any conversation with in regard to this case?

Answer. Mr. Conkling.

Question. Where did you see him?

Answer. Sitting at the table here about an hour and a half ago.

Question. In your conversation with Mr. Conkling, did you discover what you would be required to testify to?

Answer. He asked me some questions in relation to Allen's character, and I answered them.

Question. Was anything said in regard to the form of the question that would be put to you, either upon direct or upon cross-examination?

Answer. No, sir.

Question. What were you doing when you first became acquainted with Allen?

Answer. I was connected with the police department.

Question. What was he doing?

Answer. I do not know.

Question. How did you happen to become acquainted with him?

Answer. I was introduced to him on the corner of Leonard street, near the Tombs.

Question. How did you happen to remember that circumstance?

Answer. I have seen him there frequently ever since then.

Question. Have you a distinct recollection that ten years ago you were introduced to Theodore Allen, standing on Leonard street near the Tombs?

Answer. I have.

Question. Was anybody with him?

Answer. I think there was.

Question. Is there any circumstance that refreshes your recollection?

Answer. I think there was; I think there had been some disturbance on that corner.

Question. Has there been any circumstance connected with the history of Allen by which your memory is refreshed as to your having known him at this time?

Answer. No, sir.

Question. There is nothing in the life of Theodore Allen, or his connexion with you as police officer, that refreshes your recollection on that subject?

Answer. No, sir; other things have happened since that I know of.

Question. And those things which have happened you say refresh your recollection as to the fact of having known him?

Answer. Yes, sir.

Question. Have you ever heard the character of Allen for truth and veracity discussed?

Answer. I have.

Question. Where and when?

Answer. In the city of New York at different times.

Question. Will you give the first time you heard the question of Allen's reputation for truth and veracity discussed?

Answer. I think it was two or three years ago.

Question. How did that question come to be up then for discussion?

Answer. It happened during a political controversy.

Question. Did the question as to whether he was to be believed come up in a political discussion?

Answer. Yes; whether he would do what he said he would.

Question. There was some doubt expressed about it, was there?

Answer. The question was simply asked whether he would do as he said he would.

Question. Who asked that question?

Answer. A gentleman, I think, who was then comptroller of the State of New York.

Question. Of whom did he ask it?

Answer. I think it was of somebody in my company; I do not know but it was myself.

Question. Now give the second discussion.

Answer. I think I heard nobody discuss his character for truth and veracity until within about a week or less.

Question. Did you say, in reply to my question, that you had on two or three occasions heard Allen's character for truth and veracity discussed?

Answer. I did.

Question. Will you now give the second case in which you heard his character discussed?

Answer. I think that was last Wednesday, if I do not mistake.

Question. Was that conversation in relation to Allen's testimony as a witness in this investigation?

Answer. Yes, sir.

Question. Who asked the question on Wednesday?

Answer. I think it was Inspector Carpenter.

Question. Now give the third case.

Answer. I think that was last Friday or Saturday, at the police headquarters.

Question. Who asked the question on that occasion?

Answer. There was no question asked; it was a general talk with detectives Kelso, Elder, and, I think, a gentleman by the name of Bennett.

GEORGE W. DILKES sworn and examined.

By Mr. HOTCHKISS :

Question. You are an inspector in the Metropolitan police force in New York ?

Answer. Yes, sir.

Question. How many inspectors are there ?

Answer. Four.

Question. How long have you lived in New York ?

Answer. About forty years.

Question. Have you been in active business there for more than twenty years ?

Answer. Yes, sir.

Question. Have you a very wide acquaintance in the city of New York, pretty generally ?

Answer. Yes, sir.

Question. Do you know Theodore Allen ?

Answer. Yes, sir.

Question. For how long a time have you known him ?

Answer. I have known him personally for about five years.

Question. Are you acquainted with his general reputation for truth and veracity in the city of New York ?

Answer. Yes, sir.

Question. Is it good or bad ?

Answer. It is good.

Question. Would you believe him on his oath ?

Answer. I would.

Question. Would you have no hesitation about it ?

Answer. None whatever.

Cross-examined by General JEFFRIES :

Question. When did you become personally acquainted with Theodore Allen ?

Answer. I could not say exactly ; between four and five years ago.

Question. Do you remember the circumstance of your introduction to Theodore Allen ?

Answer. Yes, sir. It was on the corner of Prince and Green streets.

Question. What was the occasion of it ?

Answer. I casually met him there. I went there to see a Mr. Redin on private business. Allen happened to call in, and I was introduced to him ; I had known him by sight and reputation for a long time before.

Question. Have you seen or heard anything of Allen since then ?

Answer. Yes, sir.

Question. Is he a man who, as inspector, you would be likely to lose sight of, or to forget ?

Answer. Not very apt to.

Question. In the annals of your police system, he is a marked character, is he not ?

Answer. He is only known, so far as my knowledge extends, as a sporting man.

Question. Is the knowledge of his reputation, which you have, that of a sporting man ?

Answer. Yes sir.

Question. What is a sporting man of New York ?

Answer. A man who attends places of public amusement.

Question. What do you mean by places of public amusement ?

Answer. Horse-races, theatres, &c.

Question. Have you known of him at other places of amusement ?

Answer. I have not except by reputation. I have heard of his being at a gambling-house.

Question. Don't you know that he kept a gambling-house?

Answer. I do not know anything about it.

Question. I understand you to say that you do not know anything about his reputation, except that he is a sporting man. Do I understand that you know his reputation for truth and veracity.

Answer. Yes, because I have heard it spoken of frequently, I thought, however, you referred to his business reputation.

Question. When did you ever hear his reputation for truth and veracity spoken of?

Answer. Within a few days at the Central Police station; I have heard it spoken of probably as long as two or three years ago.

Question. Where did you first hear it?

Answer. I could not say that I could particularize the place.

Question. Can you remember who discussed it?

Answer. I do not know that I can.

Question. Do you know how the question came up?

Answer. Yes, it was in consequence of some political arrangement by which Allen was to do something for a political friend. They wanted to know if I believed he would carry out his political obligation. That was two or three years ago.

Question. Did you answer that he would?

Answer. I did.

Question. You then had a knowledge of his reputation before that?

Answer. Yes, sir, some time prior.

Question. Who did you learn it from?

Answer. I could not say who.

Question. Do you profess to know anything about it now?

Answer. Yes, sir.

Question. But you do not know who, when, or where, you got it from?

Answer. I think Mr. Hepburn and another gentleman were present during this conversation; I heard it spoken of some eighteen months.

Question. How did you happen to hear it spoken of then?

Answer. I cannot tell you the particular reason.

Question. Was there any doubt expressed upon the question?

Answer. There did not appear to be any.

Question. How then did it come to be discussed?

Answer. If I recollect aright, the question came up on the statement of Allen in regard to some transaction in the bounty business. The party I heard speak of the matter said he would believe Allen's word—whatever statement he might make.

Question. Did you have anything to do with the bounty business?

Answer. Nothing whatever, directly or indirectly.

Question. You had no connexion with Allen in any way?

Answer. None whatever.

Question. Do you state what you know in regard to Allen's character from your own personal knowledge?

Answer. From that, and from general rumor.

WILLIAM HEPBURN sworn and examined.

By Mr. HOTCHKISS:

Question. Where do you reside?

Answer. In the city of New York.

Question. How long did you live there?

Answer. Twenty-nine years.

Question. What is your business?

Answer. I am in no business at present.

Question. What business have you been in?

Answer. Commission, and several other kinds of business.

Question. What public offices have you held?

Answer. I have held the position of member of assembly.

Question. When?

Answer. This last winter.

Question. Do you know Theodore Allen?

Answer. Yes, sir.

Question. Does he reside in the district you represent in the legislature?

Answer. Yes, sir.

Question. For how long have you known Allen?

Answer. I suppose seven or eight years, about.

Question. Are you acquainted with his general reputation, in the community in which he lives, for truth and veracity?

Answer. Yes, sir; I think so.

Question. Is it good or bad?

Answer. I should say it was good.

Question. Would you believe him on his oath?

Answer. I would.

Question. Would you have any hesitation about it whatever?

Answer. No, sir.

Cross-examined by General JEFFRIES:

Question. You say you represent the district in which Allen lives. Has Allen a permanent residence in any part of New York city?

Answer. I always understood he had.

Question. Where was that?

Answer. He used to live on the corner of Spring and Mercer.

Question. How do you know that fact?

Answer. By seeing him go out and in.

Question. Were you ever in his house?

Answer. I have been to the door—never inside.

Question. Don't you know that within the last year, as a matter of fact, Allen has had no particular residence in New York city?

Answer. I always thought he had a permanent residence there.

Question. Do you know that he has been in Canada a portion of the time?

Answer. I heard so.

Question. Do you know for how long?

Answer. I do not.

Question. Are you a politician?

Answer. Somewhat. Once in a while I dabble in it a little.

Question. You take a pretty active part in politics in New York city, do you not?

Answer. More or less.

Question. To what party do you belong?

Answer. The republican party.

Question. To the same party that Allen does?

Answer. Yes, sir.

Question. Are you and Allen warm political friends?

Answer. Well, I cannot say we are very warm. We never had so much extraordinary business together politically. We have had some little.

Question. Are there any money transactions connected with the political relations between you and Allen, directly or indirectly?

Answer. No, sir; not connected with any political relation.

Question. Or in any other way?

Answer. Well, yes, sir; I think I have loaned Allen some money.

Question. Did you have anything to do with the bounty business in New York ?

Answer. No, sir; neither directly nor indirectly.

Question. Where did you first get acquainted with Allen ?

Answer. I was introduced to him on Broadway, by a man, I think, of the name of Clark, on the street.

Question. You recollect that distinctly although it was seven years ago ?

Answer. Yes, sir.

Question. How do you happen to recollect with such distinctness that particular introduction ?

Answer. I am very apt to recall how I became acquainted with the men I know. As a general thing I never scrape acquaintance. I am pretty offish about that.

Question. What are the business transactions you have had with Allen ?

Answer. Something of a private nature, and some of a political nature.

Question. Do you wish to disclose your business of a private nature ?

Answer. I have no objection. It may have been loaning him money which he returned.

Question. What other transaction did you have with him ?

Answer. I do not know of any of a private nature. I may have had conversation with him about other business; very likely I have talked with him about stocks.

Question. How long did you talk to him about stocks ?

Answer. A year ago, perhaps.

Question. Was that before he had been in the bounty business ?

Answer. I think it was after.

Question. Have you been dealing in stocks ?

Answer. Yes, sir; I deal in stocks sometimes.

Question. How did you happen to hear the question of Allen's veracity discussed ?

Answer. I have heard parties talking about it, and I once had a conversation myself on the subject.

Question. When was that ?

Answer. Six months ago. The question came up in a discussion about political matters. They said Allen was a man of his word.

Question. Is not the common talk on the street, in New York, that Allen is one of the best and most reliable men they have ?

Answer. I would not say the best. The conversation I have heard has been that he was a true man, and a man of his word.

Question. You regarded him, did you not, as pre-eminently a man of honor and truth ?

Answer. I did.

Question. You still entertain that opinion ?

Answer. I do. Until I find him otherwise, I must entertain that opinion, most assuredly.

Question. You have never heard anything against him ?

Answer. No, sir; nothing bad.

Question. Did you ever hear of his being in the city prison ?

Answer. I did not.

Question. Did you ever hear that he was indicted, tried, and, on his own confession, convicted of picking a pocket ?

Answer. No, sir, I never did. I never heard of his being arrested, or in the city prison in my life.

RANSOM VAN VALKENBURG sworn and examined.

By Mr. HOTCHKISS :

Question. Where do you reside ?

Answer. In the city of Albany.

Question. How long have you lived there ?

Answer. Fifty years.

Question. Have you been a great deal in New York city ?

Answer. Yes, sir.

Question. Spent most of your time there ?

Answer. No, sir; I cannot say that.

Question. Have you a very general acquaintance in New York city ?

Answer. Yes, sir.

Question. For the last six years, have you frequently been there ?

Answer. I have, pretty often—oftener within the last ten or fifteen years

Question. Were you absent a while during the year ?

Answer. Yes, sir, for five years.

Question. During that time were you in New York off and on ?

Answer. Yes ; about twice a year.

Question. Do you know Theodore Allen ?

Answer. Yes, sir.

Question. For how long have you known him ?

Answer. Ten or twelve years, I should think.

Question. Are you acquainted with his general reputation for truth and veracity in the community where he lives ?

Answer. I am myself acquainted with him, and am acquainted with his reputation for truth and veracity.

Question. Is that reputation for truth and veracity good or bad ?

Answer. It is good, as far as I know.

Question. Would you believe him on his oath ?

Answer. Yes, sir.

Question. Would you have any hesitation about it whatever ?

Answer. Oh, no.

Cross-examined by General JEFFRIES :

Question. Where were you subpoenaed ?

Answer. I have not been subpoenaed. Allen told me he had a subpoena for me, but I intended to come here at any rate on other business.

Question. How far is Albany from New York ?

Answer. 160 miles, by river.

Question. What were you doing in New York ?

Answer. All kinds of business. I have been harbor-master, for instance. I have had a great deal of political business there. Perhaps I could not say all kinds of business.

Question. When were you appointed harbor-master ?

Answer. In Morgan's first term.

Question. For how long ?

Answer. For two years. I remained one year, until the war broke out.

Question. Then, all the time you knew Allen as harbor-master was one year ?

Answer. Yes ; I knew him, however, before that time.

Question. Did you ever see him while you were harbor-master ?

Answer. Very often.

Question. Where ?

Answer. Up town.

Question. Where was your place of business as harbor-master ?

Answer. On West street.

Question. Where did you see Allen?

Answer. At the Astor House and other places.

Question. Did you ever see him at the house he kept?

Answer. I do not know that he kept a house. I have been to his residence. I do not know anything about his place of business.

Question. What were you doing in New York the balance of the time?

Answer. I came down on political business occasionally.

Question. Did you meet Allen when you were on political business?

Answer. He was a man I had to meet on that business. I met him at the Astor House in Broadway, and in different places, at the committee-room.

Question. What do you know of Allen's reputation with the public for truth and veracity?

Answer. I do not know that I could refer to any particular facts. As far as I am concerned you may judge my confidence in him from the fact that I loaned him \$20,000 at one time, without paper or pen.

Question. What was this money given to him for?

Answer. Bounty business.

Question. Did you get any return for the use of your money?

Answer. I presume I got \$650 or \$700.

Question. How long did he have the money?

Answer. I could not tell; three weeks or a month, I suppose.

Question. Have you ever heard his character for truth and veracity under discussion?

Answer. Yes, sir.

Question. Some affirming his good character, and others denying it?

Answer. No, sir; I do not say that.

Question. Will you please state how it was that they were discussing his reputation?

Answer. It was in reference to the matter of carrying delegations for a political meeting, carrying wards, and such things as that. They would say "Allen do you want to carry this ward?" If he would say he would carry it, they would place all confidence in his statement.

Question. Is that the only way you get your opinion of his reputation?

Answer. That is the way; and that is all I know about it.

By Mr. HOTCHKISS:

Question. You have spoken of loaning money to Allen in connexion with his bounty brokerage business. Will you state the circumstances?

Answer. The committee, consisting of Peter Cagger, and others, came from Albany on that business. I told them that Allen, of New York, could get the men they wanted about as quick as anybody; that he had some on hand. I took them up there, and introduced them to him. I travelled, I suppose, some eight or ten times between Albany and New York on that business. I received altogether, for the use of the money, \$1,500; but the expenses incurred by me were at least \$800.

Hon. HENRY J. RAYMOND sworn and examined.

By Mr. HOTCHKISS:

Question. You reside in the city of New York?

Answer. I do.

Question. For how long a time have you lived there?

Answer. Twenty-five years.

Question. What is the number of your congressional district?

Answer. The sixth.

Question. Do you know Theodore Allen?

Answer. I do.

Question. For how long have you known him?

Answer. Two or three years, perhaps.

Question. How long have you known of him?

Answer. I do not know that I have known of him much longer than I have known him.

Question. Are you acquainted with his general reputation in the community in which he lives for truth and veracity?

Answer. I am, to a certain extent.

Question. Are you sufficiently acquainted to enable you to say that you are acquainted with his standing among his neighbors for truth and veracity?

Answer. Perhaps it would be rather too strong to say I know, of my personal knowledge, what his particular standing is in that respect.

Question. Will you state whether you are acquainted with his general reputation among his neighbors for truth and veracity?

Answer. I can say that I am subject to some qualification. I have never heard his reputation for truth and veracity canvassed. I have known him, I have known his friends, and I know his general character. I have heard him talked about a great deal. I have never heard anything on the question of his truth and veracity.

Question. Then, from your knowledge of his reputation, would you believe him on his oath?

(Question objected to by General JEFFRIES, on the ground of witness not having stated his knowledge of Allen's reputation.)

The question was again propounded by the committee, and witness asked to give a direct answer.

Answer. I should say I am acquainted with his general reputation.

Question. Will you state whether his reputation is good or bad?

Answer. So far as I know it is good.

Question. Would you believe him on his oath?

Answer. I should not hesitate to believe him.

Cross-examined by General JEFFRIES :

Question. Under what circumstances did you become acquainted with Allen?

Answer. As near as I recollect, it was during a political canvass, and in connexion with that canvass.

Question. Were you on the ticket in that canvass in any way?

Answer. No, sir.

Question. Do you recollect the circumstances under which you became acquainted with him.

Answer. I do not with any accuracy. The general recollection I have about it is that he came to my office; was represented to me as living in the district that I live in, and being willing to render service for the party with which I was connected.

Question. In that conversation, was the nature or kind of service which he would render stated?

Answer. Yes, sir; it was stated to me that he was very well acquainted with a particular portion of that district; that he was very active and energetic, and that he would be very active in organizing that portion of the district, getting members of the party to attend primary meetings where delegates were to be elected, &c. I think that was the particular statement made at that time. I had no subsequent meeting with him, except to meet him casually. I may have had other meetings of a similar kind. He has been to see me frequently, and I have had occasion to see him. I never had any special intimacy with him.

Question. Were these meetings to which you refer generally political in their character?

Answer. Yes, sir.

Question. Does Allen live in your district?

Answer. I do not know where he now lives. He did then.

Question. Do you know the fact that he was a permanent resident in the city of New York?

Answer. I do not know it of my own personal knowledge.

Question. In any of these political meetings, or in any meeting in relation to political arrangements, were there any money transactions mixed up with Allen?

Answer. Not so far as I was concerned. I never knew of any.

Question. If you were told that Theodore Allen had stated that he had been offered large sums of money to operate in certain wards in the city of New York, by certain parties, would it, to your knowledge, be true?

(Question objected to as frivolous, and objection sustained.)

Question. Have you seen Theodore Allen within the last two or three years?

Answer. Not very often.

Question. Do you know the business in which he has been engaged for the last two or three years?

Answer. The last business I knew him to be engaged in was getting recruits to the army.

Question. Do you know what his last business was previous to that?

Answer. I do not.

Question. When you first knew Theodore Allen what was his business, if you know?

Answer. I do not know.

Question. Did you hear at that time that he was keeping a gambling-house?

Answer. I never heard that.

Question. Did you have any business transaction about the time, or subsequent to the time, in which he was in the substitute or bounty business?

Answer. I had no direct business with him at the time. I think when the last call was made for volunteers a public meeting was held in my district for the purpose of raising volunteers. A committee was appointed, and the question came up in committee as to the best way of filling up the quota in that district.

(The further answer of the witness was objected to as immaterial; objection sustained.)

Question. I wish to ask you whether you had any business relations with Allen other than those in connexion with filling the quota under the last call.

Answer. No, sir.

Question. You are a newspaper editor and publisher, as well as a member of Congress?

Answer. Yes, sir.

Question. You are not a lawyer?

Answer. No, sir.

Question. Did you have anything to do with pressing a claim for Theodore Allen before the department in Washington?

Answer. No, sir; I did not have anything to do with prosecuting a claim.

Question. Did you interpose on behalf of Theodore Allen to have credits allowed for bounty brokers mustered at Hoboken, New Jersey, in order that Theodore Allen might retain money which he had received for those credits?

(Question objected to by Mr. CONKLING; objection overruled.)

Answer. I applied to General Fry to have certain enlistments which were represented to me to have been made in Hoboken, and which, as I was told, General Fry had once ordered to be allowed. I applied, I say, to have the subsequent order disallowing them revoked. I do not remember to have seen

Allen in connexion with that affair, though I knew he had something to do with it. I knew nothing of any claim he had. I did not consider it a business relation with him in any respect, or with any one else, as far as I was concerned.

Question. On any other subject did you apply to the War Department in writing, on behalf of Theodore Allen, urging that no arrest of Allen should be made for his refusal to turn over that money?

Answer. I may have done so. I do not remember positively.

Question. When did you do that?

Answer. At the time that question was up. I do not remember the month. I think it was sometime last year.

Question. For anything which you did for Theodore Allen was it understood that any advantage in the way of money, directly or indirectly, should accrue to you?

Answer. Neither in the way of money, nor in any other way, was there ever the slightest intimation or expectation of such advantage.

Question. Did you write more than one letter on behalf of Theodore Allen to the War Department?

Question. I do not remember having written any; I might have written one, and I might have written half a dozen. I write a good many letters; I never keep copies of them, and seldom remember them.

Question. Is that (exhibiting a letter) your handwriting?

Answer. Yes, sir; that is my handwriting.

The letter was placed in evidence, in connexion with the testimony of the witness, as follows:

B.

NEW YORK, April 10, 1865.

MY DEAR SIR: I beg you to excuse the liberty I take in soliciting your official forbearance in regard to the case of Theodore Allen, who was recently engaged with Colonel Baker in the detection and arrest of bounty jumpers in this city. I have known Allen for a good while, and believe him to be a man of most generous impulses, energetic, fearless, and indomitable in carrying out whatever he undertakes, and ready always to do whatever is just and fair in his dealings with others. He apprehends, from something Colonel Baker has said, that summary proceedings may be taken against him in regard to moneys received and disbursed under his supervision at Hoboken. He is perfectly willing to abide any decision that fair and unprejudiced persons may make in the matter, after a full hearing, and is anxious to have it submitted to you officially. But he fears there may be some intention of arresting and committing him to prison without such a hearing.

I beg that, unless there is some very cogent necessity for a different course, any proceedings of this kind may, at least, be delayed. I have entire faith in Allen's fidelity and good intentions, and will vouch for his compliance with all his obligations. If I were not compelled to be in Albany for two or three days, I would go to Washington, and confer with you on the subject. Meantime I hope you will find it consistent with duty to comply with my request, which is also that of others, whose letters I enclose.

Very respectfully, your obedient servant,

HENRY J. RAYMOND,
M. C. Sixth District.

General FRY.

A true copy:

Brevet Lieutenant Colonel United States Volunteers.

WITNESS. I desire to say, in reference to that letter, that I wrote it simply to do what I considered justice to Allen, or to prevent injustice from being done to him. There was never the slightest intimation of any money or other consideration accruing to me from it at that or any other time.

Question. State whether, after that letter was written, you came on to Washington, and had a personal interview with the Provost Marshal General, in which you urged these credits should be allowed Allen, and he permitted to retain the money.

Answer. I did come to Washington; I did have an interview with the Provost

Marshal General; I did ask that these credits might be allowed, but I have no recollection of ever having said anything about Allen's retaining the money, and I do not believe I did.

Question. Did you then have, or do you now have, sufficient knowledge of that transaction to know that if the credits had been allowed, the money would have remained with Allen?

Answer. I did not know it, but I supposed it to be so.

Question. Did you suppose it to be so at the time you had the interview with Fry, to which you have referred?

Answer. I do not know whether I did or not. I do not know whether that question had been canvassed. I was not familiar with the money part of the transaction.

Question. After Fry had refused, if he did refuse the request you made, did you visit the Secretary of War and urge upon him the allowance of these credits?

Answer. I did.

Question. Did you eventually procure an order from the Secretary of War allowing these credits?

Answer. An order was issued. I cannot say that I procured it.

Question. Did you endeavor to procure it?

Answer. I did.

Question. Have you ever heard Theodore Allen's character for truth and veracity discussed?

Answer. No, sir.

Question. Have you ever heard anybody say anything about it one way or the other?

Answer. I do not know that I have. Perhaps that is too broad a statement. I have heard him spoken of as a very reliable man. Perhaps that would include truth and veracity, and perhaps not.

Question. Have you ever heard him spoken of as unreliable?

Answer. No, sir.

Question. Never heard it, or seen it published?

Answer. I do not remember that I have heard it, or seen it published.

Question. Did you ever hear he was in the city prison?

Answer. No, sir.

Question. Did you ever hear that he had been convicted of picking a man's pocket on his own confession?

Answer. I never heard anything of that sort.

Redirect examination by Mr. HOTCHKISS:

Question. Will you be good enough to state the understanding upon which you acted in commending this case of Allen's to the department, in reference to his having done what General Fry directed and sanctioned his doing, in regard to that Hoboken matter?

Answer. I could not undertake to state in detail what I understood then to be the facts, but generally they were these: I was told, and from various documents shown me was led to believe, that the War Department, through what bureau I do not know, had employed Colonel Baker to do certain acts, and enlist certain bounty jumpers for the purpose of entrapping them at Hoboken; that Allen and those associated with him in business were to procure the substitutes, and that they were employed with a distinct understanding of what they were to do. I was told, and was shown documents which led me to believe, that the men there enlisted were directed by order of General Fry to be credited to the county in which this transaction took place; that they were so credited in obedience to that order; that the whole transaction was done under the eye and with the aid of men acting by authority from General Fry; that

afterwards an order was issued disallowing these credits; that they were accordingly disallowed; that conflicting claims arose, I do not know for what, between the mayor of Jersey City and the persons engaged in this matter.

Question. What understanding had you as to whether General Fry had agreed that this man should be allowed to dispose of the credits and receive the money?

Answer. I do not know. I do not think I heard anything about the parties retaining the money. The understanding I had was that these credits were to be allowed, and that they had gone into the transaction with that understanding, and by the explicit direction of the Provost Marshal General. I got the impression that if they were disallowed they would get into trouble in some way with the authorities of Jersey City, or the military authorities, as having done something wrong. I thought that in what they did they had his authority for doing it, and I tried to protect them. That was my whole object.

Question. You had no other motive or understanding in regard to it?

Answer. None whatever with any one.

Question. Will you state the motive you had for writing this letter?

Answer. I supposed I had already answered that question. My only motive was to protect from an injustice that I thought was likely to be inflicted upon a person of whom I had a good opinion, who was one of my constituents, and whose relations to me, so far as we had any relations, were friendly. I did that upon application, and in reply to an application. I had no further motive.

By Mr. HOTCHKISS:

Question. Is Theodore Allen the person you have just referred to?

Answer. Unquestionably.

Question. Was he at the time a constituent of yours?

Answer. I supposed he was. I think he was, but I do not know the fact.

Question. In speaking of the credits to which you have referred, and which you say you thought ought to be allowed, did you mean the credits for 1863 upon bounty-jumpers enlisted by Ilges, in Hoboken?

Answer. I know nothing of the character of the men. I mean the men who were enlisted by General Fry, and who are certified to as enlisted by Colonel Ilges.

Mr. HOTCHKISS placed in evidence the following statement of P. A. Lafrance, dated Elmira, February 28, 1865, and transmitted to General Fry:

ELMIRA, February 28, 1865.

Soon after Major John Haddock was appointed superintendent of the volunteer services of the western division of the State of New York, headquarters at Elmira, 27th congressional district, New York, he issued an order. I would call your attention to the principal feature of that order, where he compels the provost marshal to see that the substitute receives five-eighths of the amount which the principal pays the broker or agent for procuring the substitute, which met my approbation when I saw the order, and in my honest opinion it would have been better if it had been seven-eighths as far as the interest of the government is concerned, as well as the substitute. Notwithstanding the issue of this order, and being on record now in the provost marshal's office, and I believe this is a general order throughout his division, he is giving special orders to certain recruiting agents or parties to muster substitutes; for instance, for \$300 and \$400, when the principal is actually paying \$1,000 and \$1,100, which can be shown as on record in the provost marshal's office, while other recruiting agents cannot get this favor extended to them. For instance, George B. Hanson, my partner in business called at the office of Major John Haddock, on the 24th day of February, 1865, for a special order. As a gentleman had brought us two substitutes from Canada, and had been to a great expense in getting them here, and wanted to have them mustered for \$400 each. Major Haddock was absent, Adjutant James Joice, connected with Major Haddock's office, said he would give me an answer in half an hour, and requested Mr. Hanson to call again, which he did in about thirty minutes as requested. Adjutant Joice was not in, but was told by one of the clerks that he, (Adjutant Joice,) had gone to a certain recruiting office near the provost marshal's office. Mr. Hanson soon afterwards met him on the street between Major Haddock's office and recruiting office as above referred to; at which time he (Adjutant Joice) declined granting us this favor. On the same day, about three hours after, the agents of the

said recruiting office put these same two substitutes in on special order, and had them mustered for three hundred dollars each, (\$300.) Mr. Ryan, the gentleman that bought the substitutes so stated to me upon his honor. And for further evidence I would cite you to the record in the provost marshal's office. And I could speak of other acts that are just as inconsistent, and if investigated by proper authority might possibly show the reason of this discrimination. Allow me to assure you that I am only one of a large portion of the citizens of this city that look upon this partiality with astonishment. But the old adage—What is every one's business is no one's business.

Again, allow me to call your attention to where he (Major Haddock) is allowing certain recruiting agents by special order to muster subs for other districts, aside from his own, the Twenty-seventh Congressional district, which I believe was never allowed by his predecessor, H. S. Diven, acting assistant provost marshal general of the western division of the State of New York, and has refused me this favor in every instance. And I have applied several times, and as I have heretofore remarked, if investigated I honestly believe will reflect upon Major H——'s good intentions towards the government, or his duty as an officer; and from present indications I believe he (Major Haddock) or some particular friend of his is realizing, indirectly, large profits from the above transactions. And I believe this friend to be — Morey, who, I think is a special or a United States detective, appointed by Major H. as he seems to be acting in that capacity at the same time. I know he is connected here with a firm as a recruiting agent, and so admitted by Major Haddock, and to convince you of this fact I will state that D. D. McNaiz of Scottburg, Livingston county, New York, came to my office on the first day of March, and wished to know of me if I could furnish him with five subs, and have them mustered here and credited to the 25th congressional district in which the principals resided. I told him that I was not allowed that privilege and referred him to Major Haddock. He went to Major H.'s office and asked for this privilege, Major Haddock stated to him that there were some recruiting agents here that he allowed to do this and referred him to Morey, Ferris and Lowe, three different offices, but in fact I believe they all understand each other's business. I have a memorandum of other acts which I would be pleased to make known to you in connexion with the foregoing, but will not intrude upon your patience any longer. Hoping that you will give this your earliest attention, I remain yours, most respectfully, and could refer you as to my reliability to the following named persons: D. T. Pickering, postmaster; C. G. Fairman, editor Elmira Republican; J. I. Nichols, mayor city of Elmira, and assistant United States assessor.

I enclose herewith copies of orders issued by Major Haddock, bearing upon the mustering of substitutes and recruits. These are the orders so frequently rendered null, and, by a special order, in favor of recruiting agents, before referred to. If, as he states in the one of December 19, 1864, it is contrary to the laws of Congress and orders from the Paymaster General to muster a substitute when the principal is absent, can he allow it to be done in solitary cases; and if he can in one, why not in all? I cannot see his object in doing so, as he is favoring the parties that I have already spoken of, who are not in sympathy with the administration, but are bitterly opposed to it, and are identified with that party so-called copperhead. You will find my name on your books in your office as an enrolling officer of the city of Elmira of 1863 and 1864; I believe I performed that office faithfully and honestly. My object in sending you this letter is simply to have justice done to the government as well as myself, as a Union man.

I hand you another transaction which occurred on the 14th day of February, 1865: When Albert Easton came to me and wished to enlist in the Veteran Reserve Corps, he had been discharged, on expiration of term of service, from the old 23d New York volunteers—a two year regiment; I took him to Major Haddock's office; he told me he could not enlist in said corps unless he had been discharged on account of physical disability or on account of wounds; but on the same day this firm of Maury, Nildrich, Payne & Co., through a runner by name of Bills, of this city, got hold of this man (Easton) and Haddock accepted him. His enlistment papers were made out in camp, and dated back to February 3, 1865, which I think was to favor this firm, and to evade the bounty act passed by this State, and took effect February 10, 1865, which compelled the parties which enlisted him to pay him (Easton) the full \$600 for three years' service, but they only paid him \$400 local bounty when he was entitled to \$600, as he enlisted for three years. The question now arises why did not Major Haddock enlist the man for me, and why did he sign Easton's certificate of muster, which was given in his office, and dated back to February 3, 1865, for the credit of the town of Southport, Chemung county, New York, which enabled him to draw his local bounty when he knew that I had Easton in his office only the day before? I afterwards went to Major Haddock and told him I was entitled to the hand money and he so decided, and ordered the paymaster from the town referred to to pay it to me, which he did. A few days afterwards Easton came to me and told me the parties that enlisted him told him that they had to pay the doctor in camp \$25 for passing him and \$25 to the captain for mustering him, and he (Easton) asked me why he did not get the \$600, the same as I offered him for the same town. I told him he was entitled to \$200 more, and he could get it. He went to Major Haddock and stated his case. In a few hours the parties came to Easton and gave him \$100. They found out by him that he (Easton) had come to me for information, and that I pointed out to him the course to pursue to get his just dues, of which fact these parties immediately communicated

to Major Haddock. He then sent for Easton and reprimanded him on account of his dishonor as a soldier in making a bargain with these parties, then allowing himself to be put up against them by me (La France.) But I would like to have it shown up who was in the wrong, Major Haddock and these parties, or myself.

Major Haddock then told Easton that he would have no privilege hereafter; that he would watch him, &c., for conducting himself in such a manner. I have Mr. Easton's own affidavit in reference to his enlistment and date of papers. I am in possession of other facts which I would be pleased to communicate to you, the details of which would be more satisfactory to you in person.

Respectfully yours,

P. A. LA FRANCE.

General Jeffries offered in evidence an authenticated copy of the record of the arrest, indictment, trial, conviction, and sentence of witness Theodore Allen, by the court of general sessions of the peace, held at the City Hall, in New York city, at session held on the first Monday of January, 1858, tried for larceny. Offered for the purpose of contradicting the reply of the witness Allen to the question put by Riddle, on Allen's cross-examination, as to the number of times which he (Allen) had been arrested. (Objected to by Mr. Hotchkiss.) The objection was sustained by the committee on the ground that the record offered in evidence could only be admissible to contradict the witness Theodore Allen, and is not admissible for that purpose, because the witness was not asked any question which required from him a statement of the subject matters purporting to be embraced on the record offered; and that it appears from the record offered that the evidence to which it relates was a misdemeanor; and it does not appear that the witness was sentenced to the penitentiary. The only manner in which the record could be made testimony in this case would be after the witness had been recalled for further cross-examination, and after his mind had been distinctly directed to the subject-matter now offered in evidence, an opportunity afforded him to explain. The witness, Allen being present, that opportunity would now be afforded, if desired; but whether there is not another ground upon which this evidence must be excluded, even afterwards, is a question which must be decided when that point arises.

Theodore Allen recalled and examined.

By General JEFFRIES:

Question. Were you ever sentenced to the city prison in New York for larceny, on your own confession?

Answer. Not to my knowledge in my life.

General Jeffries now offered in evidence the same record heretofore referred to and described, for the purpose of contradicting the witness.

Mr. Hotchkiss objected on the ground that the question asked of the witness and his answer to it, which General Fry seeks by this offer to contradict, is a collateral and immaterial matter, and not the subject of contradiction; second, that, by recalling the witness and proposing to him the question which has been put, General Fry made him, as to his answer, his witness.

The objection was sustained.

The following letters are those referred to as enclosed in the letter of Mr. Conkling to General Fry, of March 29, 1865. See page 49.

Hon. ROSCOE CONKLING,

Representative in Congress from the 21st district of New York.

DEAR SIR: On the 23d day of January, 1865, I received a commission, bearing date January 14, appointing me provost marshal of the 21st district of the State of New York. This appointment I owed to your kindness, and to the favorable opinion entertained of me by yourself and other prominent gentlemen of the county. It was unsolicited by me; was without knowledge on my part that it was contemplated, until it was determined upon. I have now been removed from this position by an order issued by Major John A. Haddock, acting assistant provost marshal general, western division of New York. To this order I

submit, both as an officer and a citizen; and it will be my pleasure, in every way in my power, to aid the present officer to a more successful discharge of the duties of the office than I have been able to accomplish.

It is, however, due to you, as the official representative in Congress from this district, and as the person chiefly responsible for my appointment, clearly to understand the facts transpiring at this office. I ask your indulgence, therefore, while I make a statement of the occurrences which have there taken place, that you may judge whether I have been honest or dishonest, careless or attentive, prudent or reckless; and if there has been disorder and difficulty, that you may determine whether it has arisen from my conduct or from the conduct of others. I shall make no excuses for myself, and make no charges against others, but shall state the facts, and it will be for you to draw the conclusions.

On the 24th day of January, 1865, I entered upon the duties of the office in question, in the place of Lieutenant Colonel D. C. Poole, relieved. The first question that arose occurred in this manner. Colonel Poole showed me an order from Major John A. Haddock, acting assistant provost marshal general, western division, New York, commanding Colonel Poole to bring forward to Elmira the money of all deserters in his hands. This was in contravention of the Army Regulations requiring that money be turned over to the nearest quartermaster at the end of every month. Colonel Poole, however, complied with the order of Major Haddock.

The next occurrence was in relation to bounty money. A few days after entering upon the charge of the office, Mr. Aaron Richardson, of Albany, an extensive bounty broker, brought men to enlist, to be credited to the first ward of the city of Utica, these men claiming only fifty dollars each of the local bounty.

I made every effort to secure for these recruits the full amount of the county bounty. I told them explicitly that they were entitled to receive, under a resolution of the board of supervisors of Oneida county, the sum of seven hundred dollars; that if the parties bringing them to the office would not pay them the full bounty of \$700 others would; and that they would not be held to fulfil any contract they had previously made, and that if they would allow me to aid them, I would secure for each of them the full local bounty of \$700. I informed them finally that as the resolutions of the board of supervisors allowed the recruit and agent to fix and agree upon the sum for themselves, if they still persisted in receiving only the sum of \$50, I knew of no right that I had to reject them on that account, and should muster them in. They did still persist, and said that they were satisfied with that sum, and were mustered in for \$50 each. I required, however, of Mr. Aaron Richardson that he should leave \$550 in each case in my hands, as a protection to the government against the desertion of these men before reaching the rendezvous.

Soon after mustering these men, I received the following letter from Major Haddock:

ELMIRA, N. Y., *January 28, 1865.*

CAPTAIN: Referring to my circular of date January 7, 1865, which requires at least five-eighths of all the money paid on account of the enlistment of any recruit or substitute to be paid to you for the benefit of the man, and to be forwarded with him to this place, I have the honor to call your attention to the fact that seventeen enlisted men were received here yesterday from your headquarters who had only \$50 each to their credit. You will immediately forward me a full report of the names of men forwarded, the term for which they severally enlisted, as well as the amount of local bounty paid by the town or county on account of each man enlisted. *With your report you will return this letter.*

Very respectfully, your obedient servant,

JOHN A. HADDOCK,
Major and A. A. P. M. G.

Captain P. B. CRANDALL,
Provost Marshal, Utica, New York.

Although I supposed it to be customary for all official letters to be preserved in the office, I returned Major Haddock his letter, and communicated the same reasons for my action as I have hereinbefore stated that I gave to the recruits. I received the following letter in reply:

HEADQ'S ACTING ASS. PROVOST MARSHAL GENERAL AND
SUP'T VOL. RECR'G SERVICE, W. DIVIS. STATE OF N. Y.,
Elmira, N. Y., February 7, 1865.

CAPTAIN: Your explanation relative to the enlistment of seventeen men with small bounty is received, and considered satisfactory.

I am, captain, very respectfully, your obedient servant,

J. A. HADDOCK,
Major 12th Reg. V. R. C., A. A. P. M. G.

Soon after this the following unsealed letter was shown be by Aaron Richardson, the bounty broker before mentioned, with a request that I should return him the letter as soon as read, and a promise by him that at some future time he would give it to me:

ELMIRA, N. Y., January 30, 1865.

CAPTAIN: From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men *are very valuable in putting in men*, as his acquaintance is very extensive and his resources many. I hope you will grant him all reasonable indulgence. He is a man of property, and can back up his statements.

Very respectfully, your obedient servant,

JOHN A. HADDOCK,
Major and A. A. P. M. G.

Captain CRANDALL, Provost Marshal, Utica, N. Y.

This open letter was not presented to me by Mr. Richardson until a number of days after its date, and was evidently considered by him as his private property, and to be used for his advantage. Coming under such circumstances, I returned him the letter, but subsequently obtained it, and have it now in my possession.

Some of the men presented by Mr. Richardson, and for each of whom he had left \$550 in bonds, escaped before reaching the rendezvous. Of the forty-one deserters from this office thirty-one were of the men furnished by Mr. Richardson, of whom, however seven were retaken. I claimed the \$550 for each of his men that had so escaped as belonging to the government. Mr. Richardson claimed that if the county received the credits for these men, the county would lose nothing, and I was bound to give up the bonds to him. He claimed that the government had the men as soon as mustered, and it was their business to keep them, and if they lost them it was their business to find them, and when found the government would have both the men and money, which would not be right; and persistently demanded that the bonds should be given up in case the credits should reach this office for these men. Within a few days after this conversation the following letter was presented to me. It did not come by mail, but was unsealed, and was presented to me by Mr. Richardson:

HEADQUARTERS, &C., ELMIRA, N. Y., February 6, 1865.

CAPTAIN: I shall very soon forward you six to eight more men to act as guard. In case the sergeant whom I shall forward with the men does not prove to be a perfectly reliable man you will not fail to report the fact to me, to the end that the man may be changed. You will use every effort in your power to guard against desertion. I wish you to understand distinctly that when a man is enlisted and mustered, the credit for that man is due to the locality for which he enlisted.

I shall in no case order a credit to be revoked, unless it shall appear that the local bounty committee were parties to a positive fraud. For that reason you will use every precaution to get your men delivered at the rendezvous after muster. As regards the seventeen men delivered here, with only fifty dollars each in their possession, much complaint was made by the commandant of the rendezvous camp. If the men, however, agreed to go for fifty dollars each, there can be no just cause of complaint. *It would probably be much better for the service if men would volunteer to go for no money at all, but influenced by patriotic motives.*

Very respectfully, your obedient servant,

JOHN A. HADDOCK, Major &c., &c.

Captain CRANDALL, Provost Marshal, Utica N. Y.

Soon after this, it was announced by Mr. Richardson's men that they would receive no local bounty whatever, but wished to serve the *government from patriotic motives purely*. These enlistments continued, and on the 17th of February the following telegram was received:

ELMIRA, February 17, 1865.

Captain P. B. CRANDALL, Provost Marshal:

You seem to be filling the quota of Oneida county with bounty jumpers and thieves. You will stop such enlistments immediately. Fifteen of your recruits deserted from Auburn in a body.

JNO. A. HADDOCK, A. A. P. M. G.

Another telegram the same day says:

Captain P. B. CRANDALL, Provost Marshal, Utica, N. Y.:

Retain all money deposited with you, and to be paid to recruits on their being delivered at the rendezvous. So many men enlisted by you are deserting that this course becomes necessary. I shall hold you personally responsible for the faithful execution of this order.

JNO. A. HADDOCK,

Major and A. A. P. M. G., W. D. N. Y.

Not being able to comprehend this sudden change, as the losses by desertion at these headquarters had not been large while citizen guards had charge of the barracks, and much of the loss being attributable to the sergeant and guard who were placed by Mr. Haddock himself in charge of the barracks, I addressed Major John A. Haddock at length, informing him that most of these men presented for enlistment were strangers to me, yet physically and mentally well qualified for soldiers, appeared well generally, and that I had no means

of knowing that they would steal or jump a bounty; yet as a precaution I would require affidavits from the recruits and also from parties bringing them here, as to their name, residence, &c., &c., (blank forms of which were forwarded,) and I asked for special instruction in the matter. No reply has ever been received to this letter.

The following day Mr. A. Richardson came to the office and casually inquired whether any telegrams were received from Major Haddock. The telegrams were shown him, as his men seemed more than others inclined to desert, and he said the telegrams were meant for him. He said Haddock wanted to obtain possession of those bonds left by him. Richardson said he had had a quarrel with James McQuade, his partner; that there should be honor among thieves, but McQuade wanted the whole. Colonel James McQuade, alluded to, was of Utica, and was interested with Richardson in furnishing men for enlistment. After this, Richardson said, "I understand they are going to arrest me, and they may do it as soon as they please, for if I fall we will all go together;" meaning, as I understood, Major Haddock and Colonel McQuade. He said, "I am a square man, and do just as I agree." I knew of no ground for Richardson's arrest; but taking advantage of his remarks, I said to him, "If you have fears, why not tell all you know of these frauds and save yourself?" He said, in answer, "I may talk with you another time on this subject." No further allusion has since been made to this subject by him.

I call your attention to another transaction. Mr. B. F. Secor, supervisor of Annsville, Oneida county, had received a proposition from Mr. E. D. Fiske, a bounty broker, of New York, to purchase certificates of enlistments of naval recruits. Fiske and Secor came to my office with the papers for men enlisted some time previous. Two of the enlistments papers were dated prior to December 19, 1864. The papers were correct in form, yet Mr. Secor was advised by me not to pay for the men until the credits should reach these headquarters from Elmira. Mr. E. D. Fiske said that was right, he would show us they were genuine papers, and that the credits would come. He left the office, and I did not see him again for a few days; when he returned he brought the following private letter from Major Haddock, and delivered the same to me:

"HEADQUARTERS ACTING ASSISTANT PROVOST MARSHAL GENERAL,

"Elmira, February 7, 1865.

"CAPTAIN: Mr. E. D. Fiske, of Utica, New York, has presented me certificate of enlistments of seventeen (17) naval recruits for three years, mustered by Commander John J. Young, recruiting officer at Brooklyn, New York, since December 19, 1864, to the credit of the town of Annsville, Oneida county, New York. These credits will be reported by me to you on my next report of musters; and *as they are already entered upon my books*, there can be no possible objections to the enlistment committee of Annsville settling for the same immediately.

"I am, captain, very respectfully yours,

"JOHN A. HADDOCK,

"Major, 12th Regiment V. R. C., &c.

"Captain P. B. CRANDALL,

"Provost Marshal, 21st District, Utica, N. Y."

I did not yet advise the payment, and on the following day Mr. E. D. Fiske brought a telegram from Major Haddock to himself, which he refused to let me keep. The telegram said, in substance, if Mr. Secor refused to pay for those seventeen credits, they could be credited to some other sub-district. After the New York disclosures by Colonel Baker Fiske came to me several times and insisted upon my giving up to him the foregoing letter of February 7, which I declined to do. The following telegram was afterwards received by me on the same subject:

"ELMIRA, February 22, 1865.

"CAPTAIN: Colonel Townsend, at Albany, reports that there is some doubt of the genuineness of a portion of the seventeen naval credits to Annsville, referred to in my letter to you some ten days since. Do not allow the credits until you hear further from me.

"JOHN A. HADDOCK,

"Acting Assistant Provost Marshal General.

"Captain P. B. CRANDALL, Provost Marshal."

This proceeding took me by surprise, because I knew that orders from the War Department require that the sub-district to which credits can be given must be entered on the enlisting papers at the time of enlisting, and cannot afterwards be changed. This narration shows that Major Haddock disregarded the order already quoted in at least two particulars. First, he entered the credits on his books, if he entered them at all, in direct violation of the order above referred to, and if he did not so enter them he mis-stated the matter to me; and, in the second place, his telegraph to Mr. Fiske, authorizing a transfer of the credits, was still more destructive of the order in spirit and letter. As to the general intention of the telegrams and letters of Major Haddock to Mr. Fiske on this subject, you can draw your own conclusions. Fiske subsequently informed me that these papers, except two, had been sold to parties in Onondaga county for fifty dollars each more than Secor was to pay..

The following circular was received by me on the 26th of January, 1865:

[“Circular No. 23.”]

“HEADQUARTERS, &C., ELMIRA, N. Y., *January 24, 1865.*

“The provost marshals of this division are hereby forbidden to muster recruits or substitutes to the credit of any subdistrict outside of the western division.

“JNO. A. HADDOCK, *A. A. P. M. Gen.*”

February 17, 1865, I received the following telegram from Major Haddock:

“You can muster seven men for the town of Schuyler, Herkimer county, and notify Captain Emerson, Watertown.

“JNO. A. HADDOCK, *A. A. P. M. Gen. &c.*”

Herkimer county, as well as Schenectady, hereafter mentioned, are in the eastern division. Brokers in this city presented the men, and they were mustered in for the town of Schuyler, Herkimer county, 20th congressional district. A telegram was presented to me at this office, directed to Colonel James McQuade, saying:

“The request is granted; men can be mustered at Utica for the credit of Schenectady county.

“JNO. A. HADDOCK, *A. A. P. M. Gen.*”

I give the substance of this telegram accurately. Colonel McQuade refused to leave it with me.

And soon the following telegram was received by me:

“ELMIRA, N. Y., *February 23, 1865.*

“CAPTAIN: You can muster, for Alderman Van Emburgh, fifty men to the credit of Schenectady.

“JNO. A. HADDOCK, *A. A. P. M., &c.*”

And another telegram came soon from Major Haddock, saying, “You can muster thirteen more men for Schenectady.” I mustered three men under this order, when the parties bringing the men, (Van Emburgh & Co.,) said they had received notice from Colonel Townsend, acting assistant provost marshal general eastern division, New York, that credits could not be given in the eastern division for men mustered in the western division; and soon the following telegram was received from Major Haddock, directed to me:

“By what authority have you mustered seven men for the town of Schuyler, Herkimer county?”

“JNO. A. HADDOCK, *A. A. P. M. Gen. &c.*”

This despatch I also state from recollection, as it has been taken from my possession. In answer to this despatch I returned to Major Haddock a copy of his order of February 17, hereinbefore set forth, and have heard nothing further from him upon the subject.

I call your attention to another transaction. The following circular was received by me about the period of its date:

“HEADQUARTERS, &C., ELMIRA, N. Y., *January 30, 1865.*

“CAPTAIN: You will not *muster* men for any of the new organizations named in Circular No. 25, dated January 25, 1865, until you hear from these headquarters. You will, however, enlist, clothe, and forward the men as therein directed.

“By order of Major Haddock, acting assistant provost marshal western division of New York.

“JAMES JONES, *Lieut. A. A. A. Gen.*”

I enlisted men for the 192d regiment, the rendezvous for which is at Albany, and for the 193d, whose rendezvous is at Auburn, both of which regiments were of the new organizations; but in pursuance of the foregoing order of January 30, did not sign the muster certificate. On or about its date I received the following:

“ELMIRA, *February 3, 1865.*

“CAPTAIN: Circular No. 29, issued from these headquarters, is hereby revoked. You are, therefore, authorized to muster men for any of the new organizations named in circular No. 25.

“JOHN A. HADDOCK.”

In pursuance of the order of January 30, the enlisting papers made out between the order and the notice of its revocation were sent forward, with the *muster* for the regiment, unsigned. On organizing the companies at Albany, it was ascertained that the muster was not signed. An agent was sent here with the enlisting papers, and a telegram sent from Albany to Elmira, to authorize their signature at this office. A telegram was received by me from Elmira, directing their signature, and the papers were then signed. A delay of several days in the organization of the companies was thus occasioned. Soon afterwards, the enlisting papers from Auburn, issued during the same period, were sent to me for signature of the muster, with the following message:

“Gross errors of this description will be hereafter reported to the Provost Marshal General, with the recommendation that your pay be stopped.

“Respectfully

“JNO. A. HADDOCK,

“Major 12th Reg't V. R. C., *A. A. P. M. Gen.*”

This transaction, I think, requires no explanation on my part. How it may be with others is not for me to say.

On or about the 25th of January, a colored boy, named Nelson, came to my office to enlist, and wished his local bounty to be paid in a county bond, and wished that the bond should be left with Major Michael. This would be in violation of the orders contained in circulars 19 and 20, which required all bounties to be paid in greenbacks or national currency, and circular No. 7, which required five-eighths of the money to go forward with the recruit. It was with regret that these requests were declined, and the enlistment failed, as I believed the boy to be honest and true. The orders, however, were imperative. James McQuade wrote to Major Haddock on the subject, and an order came at once to muster Nelson, and allow him to receive the bond and have it left as the recruit desired. It was so done, and the boy went forward.

About the same time the following action of the board of supervisors was taken, and a copy sent from these headquarters to Major J. A. Haddock:

"Mr. W. Lewis offered the following preamble and resolution, which were unanimously adopted:

"Whereas, it seems by an order from Major John A. Haddock, acting assistant provost marshal, that all the bounty paid by the county to men who enlist must be forwarded with the recruit, and paid at Elmira in greenbacks or national currency.

"Every precaution to prevent desertion should be used, at the same time the recruit should be protected in his bounty.

"In some cases the order above referred to seems to be proper, but to make it a rule, without exception, must and will prevent a large class of enlistments, and of those whom it is most desirable to secure, viz: those who are known to be reliable, who are prompted by patriotism as well as pay to enlist. Such men desire, before leaving, to make necessary provisions for their families, to pay up their debts, and close up their affairs, and invest their own money.

"Many who can are desirous of investing their bounty in county bonds—some otherwise. Under the last call, many took county bonds for bounty. Sufficient currency could not be obtained to pay all, a state of things which will be likely to occur again should our quota be twelve hundred, as intimated by Major Haddock.

"If men who are reliable, yet so situated as to need or insist as a condition of enlistment that their bounty shall be under their control, and it cannot be done, they, of course, will not enlist.

"On the other hand, should all recruits consent to go and receive their county bounty at Elmira, there is another objection quite as serious. It will be nearly or quite impossible for the county to obtain the currency demanded.

"Under the last call it was impossible to raise currency of any kind sufficient to pay the men, and under the order above referred to, in paying, not to exceed thirty men, greenbacks have gone up here one per cent. premium. The currency demanded cannot be raised in this county or for it, sufficient to pay any considerable number of men without a ruinous sacrifice; therefore,

"*Resolved*, That P. B. Crandall, provost marshal of twenty-first district, be requested to submit the considerations above named to Major John A. Haddock, and, if possible, procure a repeal or modification of the order above referred to, in such a manner that men who desire to serve their country shall receive their local bounty here, and that those who have in charge the raising of their local bounties may not be embarrassed in raising and payment thereof, beyond what will satisfy the recruit. In short, that it be so modified that all honest recruits shall have the disposal of all their local bounty; that the provost marshal here, who is a citizen of this county, and knows the people, shall have a discretionary power to pay or withhold the bounty as he may think the good faith of the recruit and the interest of the military service demand."

From whom I received the following reply in substance: "That the proceedings of the honorable board of supervisors of Oneida county would receive due consideration, but until further orders from these headquarters, you can obey orders already received." The letter not being present, the above is given from recollection. Mr. McQuade's request was granted at once. The request of the supervisors received no attention.

In taking charge of the provost marshal's office of the twenty-first district, my first act was to discharge two clerks who had served under Captain Richardson, and had been continued under Lieutenant Colonel Poole. Benjamin A. Clark, first clerk, was one of those discharged. He had been charged with having had connexion with other parties in furnishing substitutes and recruits, and also with having charged and received pay of citizens and soldiers for making and altering papers, while acting as clerk and in the employ of the government. He could not be retained under any circumstances while I had charge of the office. Upon this subject, within a few days after taking charge, I received the following letter, after Mr. Clark had visited Elmira:

ELMIRA, January 28, 1865.

CAPTAIN: I have learned, to my surprise, that you have discharged from your employment three of the old clerks of your office, who were employed by your predecessor. It is

my impression that you will find it impossible to carry on the business of the office properly, without retaining some of the old force, who are acquainted with the business.

I would advise you to retain some, and would respectfully recommend that *Mr. Clark be employed without loss of pay.*

Yours, respectfully,

JOHN A. HADDOCK, *Major Twelfth, &c.*

Captain P. B. CRANDALL,

Provost Marshal, Twenty-first District, Utica, New York.

Three of the old clerks were retained. On his arrival here on the 13th instant, Major W. H. H. Beadle, in speaking of the clerks, said he came with instructions in one case only, and immediately reinstated Benjamin A. Clark as first clerk.

From the first I have taken every precaution to prevent desertions. After learning not to trust the guards sent here from Elmira, I employed citizen guards, and advanced of my own money \$53, and assumed a personal responsibility to see them paid, and by so doing secured an attentive, efficient guard for the barracks.

In relation to the local bounty, I have secured for the recruit the full amount, in every case where it was possible for me to do so. I obeyed Circular No. 7, requiring five-eighths to be sent forward with the recruit, until the order was changed by Circular No. 32. The effect of Circular No. 7 was to compel the recruit to state a falsehood whenever he wished his money to be left at home for his family or friends. The agent and recruit could fix the bounty, if it was desired that the money should be left at home, and a small amount was named, as only five-eighths would be required to be sent forward with the recruit. This amount would be declared as all of the local bounty they were to receive, when probably nearly the full amount had already been secured.

Many recruits had families, to aid whom they enlisted, and it was reported here that if their money went forward, it would go to the front, and, they feared, never to return to them. Circular No. 7 prevented our own citizens from enlisting, for fear the bounty money would be taken from them and carried from their homes. When it was desired to use it, the recruit must lie to keep it here. I felt this to be a position humiliating and embarrassing to me, to stand up as a government officer, accept a lie, or injure a dependent family, or deprive government of an honest recruit. No one could tell whether, by demanding a larger amount as a condition of muster, I was aiding the government, the recruit, or his family, or the broker, or the agent that wished to aid the recruit in getting the money back from the rendezvous or the front.

I was relieved by receiving the following circular, which reached me February 7, 1865:

“HEADQUARTERS A. A. PROVOST MARSHAL GENERAL,

“WESTERN DIVISION NEW YORK,

“*Elmira, N. Y., February 3, 1865.*

[Circular No. 32.]

“Circular No. 19 and 20 from these headquarters, dated respectively January 17 and 18, 1865, are hereby rescinded, and provost marshals are instructed that the local bounties to enlisted men may be paid in county money, bonds, or such other securities as the enlisted man may elect or consent to accept.

“JOHN A. HADDOCK,

“*Major 12th V. R. C. A. A. P. M. G. W. D. N. Y.*

“Captain P. B. CRANDALL.”

After receiving this circular, I did not send the money forward, if the recruit refused his assent, but in all cases urged the recruit to send the full bounty forward, as a relief to myself; but if they would not consent, I agreed to place their money in banks, and after they had reached the rendezvous to send it by express or pay it to their friends, as each recruit should direct. This course has destroyed uniformity in the amounts sent forward. I allowed the recruit to elect as to what he choose as a security. If he received a bond, of course five-eighths of it could not be forwarded. The money thus left with me has been held until the recruit reached the rendezvous, and then sacredly disposed of as directed by him, until I received the order to hold all money remaining in my hands. All the money held by me belonging to recruits that have deserted before reaching the rendezvous has been turned over to the quartermaster at Rochester, as directed by general orders. I now hold bonds, checks, and cash to the amount of \$15,050, (fifteen thousand and fifty dollars,) which I claim belongs to the government. This amount was put up as a security against desertion by A. Richardson and Van Emberg & Townsend. Of this amount I claim \$550 each for twenty-four men, and \$375 for two men furnished by A. Richardson that have deserted, and I hold bonds and cash in amount sufficient to satisfy these claims, and I hold Van Emberg & Townsend's checks for \$1,100 for two men furnished by them that have deserted. The rest of the money in my hands belongs to recruits and their friends, amounting to nine thousand five hundred and forty-five dollars, (\$5,945,) which I have agreed to pay according to directions given at the time of enlistment. These recruits have long since gone forward and been receipted for at the rendezvous. This money would have been placed in the hands of those to whom it belongs long before this, had not Major Haddock's order prevented it. I

ardently desire to pay this money to parties as directed, many of whom I know to be suffering for it; and I also desire that the government should receive the amount I demanded for its protection in the cases where the recruits have deserted.

Major John A. Haddock has three times demanded of me to turn this money over to him or to agents sent by him, which I have three times declined to do, and in each case I gave as a reason, which was true, that eminent counsel had advised me that I could not safely do so. I have, by letter of the 11th instant, referred the whole matter to the War Department for specific instructions. I respectfully refer to the telegraphic despatches sent to Major Haddock by Mr. Hoard, his agent, who visited these headquarters, which despatches will vindicate me from all imputation respecting my non-transfer of such bonds and money as I did not deliver over.

I am, sir, very respectfully, your obedient servant,

P. B. CRANDALL.

To Hon. ROSCOE CONKLING,

Representative in Congress from the twenty-first district of New York.

SIR: Your act of kindness and regard shown me in recommending my appointment of commissioner of the board of enrolment of the twenty-first district, New York, will ever be remembered with feelings of gratitude on my part, notwithstanding I am now relieved from the duties of that office.

The occasion of my being relieved is unknown to me, and I am also equally ignorant of the cause for which the other members of the board were relieved. I do not understand that any reason has been stated as to any member. Inasmuch as no charges have been made, and no reasons given for the unexpected removal of the entire board, as well as several attaches of the office, we feel it due to *you* and to ourselves, (as well as to satisfy the inquiring public,) that a statement should be given of facts growing out of the official relations of Major John A. Haddock with the office of the twenty-first district, as it is understood it has been through and by him these removals have been effected.

In order that a full understanding can be had, it is necessary to go back to the time when Captain J. P. Richardson was relieved by Colonel D. C. Poole, which was soon after Major Haddock assumed the duties of his present post at Elmira. In what I have to say I shall confine myself mainly to what took place during the time Colonel Poole had charge of the office, leaving Captain Crandall to make his own statement as to what has transpired subsequent to that time. Colonel Poole took charge of the office as provost marshal December 23, 1864. Soon after he came recruiting was commenced to fill the call of December 19, 1864.

On the 21st of December the board of supervisors of Oneida county passed a resolution authorizing the payment of six hundred dollars local bounty for every recruit or substitute enlisted for three years, and credited on the quota of the county, under the above named call, and twenty-five dollars to the agent who procured the recruit or substitute.

On the 26th of December, Henry T. Utley, who was then and now is a partner of George W. Smith, county judge of Oneida county, brought from the jail to the office, for enlistment and muster, Charles E. Norton. *This Norton is a desperado, and was committed to jail on charge of burglary and theft; and on the night he was taken to Elmira he attempted to murder the agent who went with him. Objections were raised by the members of the board against receiving Norton as a recruit, on the grounds, first, that he was a bad man, and second, because by an arrangement with parties interested in getting him passed, he was to receive none, or but a small portion of the local bounty, not to exceed fifty dollars in all, while the county paid to some party or parties six hundred and twenty-five dollars, providing he applied on the quota. For these reasons Norton was rejected, and again lodged in jail.*

I am informed by J. C. Donaldson, deputy sheriff, that by order of George W. Smith, who is county judge, Norton was on the 5th day of January, 1865, taken from jail and brought before said Smith, and with the understanding, among other things, that he should enlist, let to bail Utley being his bail. Where the bond is upon which Norton was let to bail, I am unable to learn; it cannot be found at the Oneida county clerk's office, where it should have been filed, and is not in the possession of the district attorney.

Immediately thereafter, on the same day, Utley, Norton, and the officer (Donaldson) having Norton in charge, appeared at the provost marshal's office. At the time the parties thus appeared, Utley handed Colonel Poole a letter written by said Smith, and an order written by Major Haddock, on the same sheet of paper, of which letter and order the following is a copy:

UTICA, December 30, 1864.

MY DEAR HADDOCK: Allow me a word further in explanation of the matter of the enlistment of Charles E. Norton, which perhaps has been miscarried.

Norton proposes, in consideration that Utley bails him out, and in consideration of his other services, to volunteer, and to give Utley such bounty as may be obtained hereafter from the county on account of his enlistment. As between the volunteer and the government the case is as if he enlisted without local bounty, he having, of course, all the United States bounty given in such cases.

The proposition in your letter as to sending the money to Elmira, to be held by you, would be entirely satisfactory if the money could be obtained; but the county has not as yet made

any provision for raising the money, and no bonds will be issued for some ten days. Of course Utley cannot raise the money and advance it on the contingency of the recruit's action at Elmira, when he might finally interpose difficulty.

I do not see why the man cannot be mustered in. The government is to lose nothing even if the recruit should desert; and Utley will see to it personally that Norton is delivered at Elmira, and no credit need be given to the county until he is delivered. The whole arrangement is at the express desire of Norton, who fully understands his rights.

What is desired is, simply directions to muster him into the service and forward to Elmira, and if he does not report then all right, the whole goes for nothing.

As ever, faithfully,

GEO. W. SMITH.

Major JOHN A. HADDOCK, *Elmira*.

P. S.—I have written you twice lately.

"Colonel Poole will muster the man on showing him this note; but if the man deserts before reaching here, the credit will not be allowed. Your letter fully explains the case.

"To my utter surprise, but doubtless to your gratification, I am ordered to levy only two hundred and seventy-five men on the twenty-first district; a large number, if not all, of your Oneida enlistments must have been for three years. Tell Colonel Mc. of this.

"In haste, your friend,

"JNO. A. HADDOCK, *Major, &c., &c., &c.*"

In pursuance of the above, Norton was, on the 5th of January, mustered, and on the 6th of January sent to Elmira in irons, receipted for, credited to the town of Sangerfield, vouchers of his enlistment given, and the county paid six hundred and twenty-five dollars, including the enlistment fee, twenty-five dollars, that being the highest bounty the county then paid.

The first letter spoken of by Smith we have been unable to obtain. That letter, doubtless, would more fully explain this transaction. It is quite evident, however, that Major Haddock knew that Norton was a "jail bird" and a felon, and that the local bounty then was six hundred dollars, and to secure it to some one besides the recruit it was necessary this man should be credited.

The effect of this operation was to give the men who had this matter and man in charge five hundred and seventy-five dollars, and to add to the army (if he ever reached the front) a felon and a desperado, and to enable him thus to escape the punishment due his crimes. By it we also learn that the perplexing question about local bounty, and sending it to the front with the recruit, is of no moment, when *special reasons* are urged, and *friends* are to be remembered.

Colonel Poole after this, and after (as I am informed) having received a private and unsealed letter from Major Haddock, through the hands of a bounty broker, directing Poole to muster men for three-eighths of the local bounty instead of five-eighths, about which so much has been said, disposed of the local bounty in payment of recruits and substitutes as he thought best. He endeavored, it is true, to forward the local bounty with the recruit when all parties were agreed, but when demand was made that a share should be left for either broker or friend it was done.

Colonel Poole was sued twice while here for a refusal to pay over the bounty money, and an order for his arrest was obtained. Major Haddock was notified of the whole facts of the case, and his directions solicited; whether he gave any I am unable to learn.

In one suit three hundred dollars was claimed, and paid by him to a broker, on account of one substitute, the substitute receiving three hundred dollars.

In the other case sixteen hundred dollars was claimed by the broker, out of twenty-four hundred dollars paid for four recruits, and paid over by Poole, the recruits receiving only \$200 each.

In all of these cases the money was all deposited with Poole as security against desertion, and not to be paid until the men reached the rendezvous and were receipted for; yet two of these never reached the rendezvous, but deserted.

Colonel Poole was urged by other members of the board to defend these suits, and thus settle the rights of parties concerning the local bounty. He declined to do so, saying, in substance, "That he did not like to take the risk and responsibility; that in the great struggle going on in the country, the government had no time to attend to individual matters like this."

Colonel Poole took such course in paying local bounty as he thought prudent and best. Captain Crandall has taken such course as humanity and justice dictates, at the same time intending no disrespect or disobedience of the orders of those superior in authority; and we have yet to learn that Colonel Poole has ever been censured or called to an account for his course in this respect by Major Haddock. Captain Crandall is, however, attempted to be held personally responsible in paying out local bounty, however meritorious and just the claim.

Inasmuch as some complaint has been made against Captain Crandall on account of desertions that have occurred, by way of comparison, and also for the further purpose that such complaint shall be lodged where it belongs, we submit the following statement of enlistments and desertions under Poole and Crandall, together with orders, letters, &c.

While Colonel Poole was in charge, it being one month, seventy-three men were enlisted

and mustered, eighteen of whom deserted before reaching the rendezvous, and none were retaken; sixteen of those thus mustered by Poole were on hand when Captain Crandall took charge of the office, and by him forwarded to the rendezvous and receipted for, leaving just thirty-nine men forwarded by Colonel Poole.

Under Captain Crandall five hundred and forty-four men have been enlisted and mustered, forty-one of whom deserted before reaching the rendezvous; seven of these were, however, retaken by Special Agent Francis Buckhart, who was promptly dismissed by Major Beadle on his arrival.

Ten of the forty-one deserted at Albany, while on their way from the depot to the barracks, in a tumult and row got up at Albany. Eight deserted at the barracks in Utica, while under charge of Sergeant Sabine and a squad of men detailed to these headquarters by Major Haddock.

On Sabine's arrival at Utica from Elmira, he handed Captain Crandall a letter, of which the following is a copy:

HEADQUARTERS ACT. ASS'T. PROVOST MARSHAL GENERAL,
AND SUPERD'T OF VOL. RECRUITING SERVICE, W. D., STATE OF NEW YORK,
Elmira, New York, February 7, 1865.

CAPTAIN: I send you Sergeant Sabine and Corporal Hanlon, both good men. *You will place Sergeant Sabine in charge of the guard at your headquarters, as he appears to be a very trusty man.* Please notify me of the arrival of these men.

Respectfully, your obedient servant,

JOHN A. HADDOCK,
Major &c., &c., &c.

Captain CRANDALL,
Provost Marshal, Utica, N. Y.

In pursuance of the foregoing, and on the day of his arrival, Sabine took charge of the barracks, and before nine o'clock of the evening of that day *eight* men had deserted from his charge, and on search, Sabine was found attending a theatre in Utica, with two more of the recruits placed under his charge. He was immediately arrested by a special agent—the two men found with him returned to the barracks, and Sabine locked up in the watch-house.

The next day Sabine confessed that he required that the two soldiers found with him should, and did, pay him ten dollars each for taking them out. Major Haddock was notified of this transaction by us, and Sabine was returned to Elmira by Captain Crandall, under guard. What disposition has been made of his case, we have not been able to learn. No witnesses have been called from here, and I think he has not been tried for this offense.

In this connexion, it seems proper to state that in the selection of guard by Major Haddock, and by him detailed to these headquarters, he has been most unfortunate; *out of 18 sent in all, 16 have been returned—2 for ill health, and 14 for incompetency, drunkenness, or dishonesty.*

There are many other matters that might be noticed. The many contradictory, conflicting, uncertain, and indefinite orders, letters, and communications of Major Haddock, are matters which you ought to see and read, that you might better understand the embarrassing circumstances in which the board of the 21st district have been placed since Major Haddock was appointed acting assistant provost marshal general.

In conclusion, I have only to add that while acting as commissioner for nearly two years, I have been treated with uniform courtesy and kindness by all having business with the office whose intentions were honest and fair—for which I shall ever feel grateful.

I am, sir, very respectfully, your obedient servant,

I. MUNROE.

ARGUMENTS OF COUNSELS.

ARGUMENT

OF

MR. A. G. RIDDLE

On behalf of General Fry.

JUNE 26, 1866.

I feel, Mr. Chairman and gentlemen, a degree of embarrassment in which I am sure you will sympathize. With the best diligence that I have been able to give to this matter since I was advised of the time at which it was expected to be summed up, I am now about to attempt that labor without having either heard or read all of the testimony; and of some of it my only recollection is from hearing it given several weeks ago. There are, as I suppose, among the voluminous papers in the case, some with which I am yet to be made acquainted, either what they are, the purpose for which they are offered, or what they contain. It is very obvious, therefore, that no great measure of good is to be achieved by any summing up by me.

The military education and habits of thought of General Fry made it especially his wish that whatever was done in the way of argument in his behalf should be submitted in writing. It is not at all consistent with his view of what is due to a grave tribunal that it should be obliged to listen to a wordy harangue. Nor is it, in the judgment of military men, best promotive of that proper analysis of testimony and that just application of the principles of law which in all tribunals is esteemed so essential; but time to write out our views could not be found. I beg further to state that, except on one point, I have had no benefit of verbal or written communication from General Fry as to his views of the proper method of presenting any part of the case; neither have I been able to avail myself of the labors of my able associate, General Jeffries, to any great extent. And whatever I may say is in nowise to be charged over to General Fry, nor should he in any just sense be held responsible for it. With these preliminary remarks, and under these disadvantages, I will proceed, as well as I can, to submit such views as I deem fitting and proper to present to this committee.

It is possible that I have not quite appreciated the importance attached to portions of the investigation. I am frank to say that, in my judgment, its principal importance arises from the fact that it has been ordered by the House of Representatives, which I regard as probably the most remarkable House (and will be so held in history) that has ever organized in this Capitol, and from the additional fact that, with very considerable care, you, gentlemen, have been selected to conduct this investigation.

On the 30th of April last the House adopted a resolution which gave to this committee jurisdiction over the subject-matter. Its duties were to investigate certain statements and charges made by Mr. Conkling as a member of Congress, on the floor of the House; and also, in connexion with that duty, to examine the statements made by General Fry in his communication to Mr. Blaine on the 27th of April, in some sort a reply to Mr. Conkling. The present investigation, as we are advised, falls under the last clause of the resolution—to examine into the statements and subject-matter of this letter. As I have once or twice before intimated to the committee, I had supposed that my duties could be best performed, and only performed, within the limit of examining this letter with reference to the apparent motives with which it was written, the statements which it makes, and the authority upon which they rest. Beyond that I do not know that I have any purpose in being here at all. I have never supposed that General Fry occupies the position of prosecutor of Mr. Conkling. I have never supposed that in consenting to represent him before this committee I took upon myself any such duty or fell under any such obligation in that direction. A fair statement of the matters which lie below, and yet appear on the surface of this letter, and an incidental notice of the vast multiplicity of facts and circumstances that have been connected with them in this investigation, will embrace the whole circle of what I propose to speak upon.

It has been said a good many times to this committee, with a coolness of manner which is somewhat refreshing with the mercury at its present altitude—said with an air that defies description or imitation—with a selection of language which, for concentrated bitterness, could only be reached by study, that this letter of General Fry's, from its date to its final signature, does not merely contain accidental mistakes which a careless writer might have fallen into, but that it was a tissue and framework of utter, complete, and profound falsehood throughout; that it contained no truth, no semblance of truth, nothing allied, in its remotest relationship, to what could be esteemed or called truth; that it was false in fact, false in purpose, false in design, false in statement, false in its body and its soul, a great giant libel, compared with which all the definitions of *scandalum magnatum* in the books are to be regarded as harmless and playful sallies. In that view of it the gentleman (Mr. Conkling) was correct yesterday in stating that he complained of it as a libel, and hence we ought to be the defendants—a view in which we were entirely willing to acquiesce, and to be placed in that position in the summing up. But the gentleman declined to open the argument.

In order that we may to some extent understand this thing, I propose to look a little into the circumstances in which this remarkable production had its origin, the atmosphere, the surroundings, and the relationships of the parties, all of which, I think, are important to a just estimation of the character of this paper.

On the second or third day of the present session Mr. Conkling, as a representative from the twenty-first district of New York, introduced a resolution in the House directing the Committee on Military Affairs to inquire into the expediency of abolishing the bureau of the Provost Marshal General. The purpose of the creation of the bureau had been fully accomplished. It was about to pass away, and it might be well to have the honor of finally putting it to death. That resolution took its course; and, so far as my observation goes, the surface of proceedings in the House has not been disturbed by its reappearance.

I may say a word here in reference to that bureau and its chief. I believe it is the first, as I trust it will be the last, instance in American history in which it has been or will be necessary to create such a bureau. It is useless to refer to the extraordinary state of things which called it into existence. We shall probably never be able to comprehend accurately in its just magnitude the great contest through which we have passed. We were to some extent part and parcel of it, items which were mixed and mingled in its revolutions and convolutions; and we will never be able to place ourselves so far from it as to appreciate

in any proper degree its magnitude. This bureau was created. It has placed in the field an army greater than the fables of history ascribe to Xerxes. It has placed in the field an army which, under its own leaders, could at any time during the height of Napoleon's career have ranged him on the side of his enemies, and have swept the allies thus composed from any battle-field of Europe. While the greatest and gravest of duties devolved upon the commander-in-chief of the army, and while the Quartermaster General's and the Adjutant General's departments were ably conducted, nothing but perfect failure could have awaited the efforts of the Secretary of War in that great struggle, if anything but success, and entire success, had waited on the efforts of the chief of this bureau. To have made a wrong selection of a man to fill that place would have been almost fatal. To have continued a man there who was incompetent would have risen to the gravity of a crime. To have continued a man there who was not only incompetent, but flagitiously corrupt, would have soared up to a degree of criminality which could have found its parallel only in the great leaders of the rebellion. If the administration of the War Department has been attended with success, signal or otherwise, it is in a great degree because success has waited on the chief of this bureau. To impeach him, or to attempt it, is to assail directly the administration of the War Department itself. From the intimate personal relations between the Secretary of War and the Provost Marshal General from their constant interchange of official duties, it is utterly impossible that any degree of incompetency or corruption could have attended the discharge of the duties of this officer without in a remote or immediate degree implicating and involving the chief executive of the War Department himself.

To return. On the 25th of April, and while the military bill was under consideration in the House, the gentleman from New York (Mr. Conkling) moved to strike out the 20th section of the bill. That section, as is in the recollection of the committee, looked to a continuance of the Provost Marshal General's bureau, under the management of a provost marshal general, with the rank, pay, and emoluments of brigadier general, and one assistant provost marshal general, and several other officers.

"I move," says Mr. Conkling, "to strike out section 20 of the bill." And proceeds: "My objection to this section is, that it creates an unnecessary office for an undeserving public servant; it fastens, as an incubus, upon the country a hateful instrument of war, which deserves no place in a free government in time of peace.

"I have never heard any very serious attempt to justify by argument the permanent continuance of an officer whose administration during the war has had in it so little to commend and so much to condemn."

And further he says:

"But there are yet other grounds of objection. I protest against any promotion or reward for the officer whose interests are involved in this section. He holds already the rank of lieutenant colonel in the staff department. Indeed, by accident, if the pending bill shall pass, he will be elevated to yet a higher grade; but as he stands now, his pay amounts to \$3,500, or thereabouts. I think that, for the present, is enough for him. He has suffered nothing and lost nothing in the war that I ever heard of, and I protest, in the name of my people and in the name of the people of the western division of New York, against perpetuating a power under which they have suffered beyond the capacity of any man adequately to state in the time allotted to me.

"Central and western New York have a right to feel, and do feel, deeply on this subject. My constituents remember, and other constituencies remember, wrongs done them too great for forgetfulness and almost for belief, by the creatures of this bureau and by its head.

"We in the western division of New York had sent to rule over us as assistant provost marshal general an officer of the Veteran Reserve Corps; a man

who never saw a battle, who never received a scratch or suffered a day's sickness in the military service; a man honored with the especial personal intimacy and confidence of the Provost Marshal General, and who in a marked and ostentatious degree reflected the will and the favor of his chief. He had been for some time in the office of the Provost Marshal General here in Washington; he was his crony and confidant, and sustained with him, as events proved, relations of great personal intimacy. This spokesman, so trusted and so fortunate, did not come to us alone. There came at the same time other creatures of the head of the bureau at Washington. The western division swarmed with these chosen favorites, and they illustrated to the full the genius and the morale of their mission.

"By acts of their own, and by acts done by their superior at Washington, they turned the business of recruiting and drafting into one carnival of corrupt disorder—into a paradise of coxcombs and thieves. False quotas were put upon us; exaggerated telegrams and orders were sent to our boards of supervisors. We were victimized by constant uncertainty and deception. In my own district, under one call, \$438,000 was wrongfully wrung from an outraged and groaning people. Officers of this bureau who sought to stem the tide of fraud were removed without warning, and the whole machinery of the government was subjected to miscreants and robbers. Communities petitioned and remonstrated in vain. The most palpable wrongs were refused redress. Men immeasurably the superiors of General Fry represented and protested, but they were spurned with magnificent disdain. Never was 'the insolence of office' more offensively portrayed than it was by this man whom it is proposed to decorate and enrich.

"If there was no design at headquarters to do wrong, there was a capacity to muddle, to befog, to misunderstand facts, and to misread and misstate figures and simple results, which is nearly inconceivable.

"I was employed by the government to prosecute some of the frauds to which I have referred; and I tried this assistant provost marshal general, who had been justified in all the outrages he committed and in all the acts by which millions were stolen from the people of New York; who was justified by his superior officer down to the time when the sentence was published, and afterward, I understand. He was accused and convicted of the basest forms of official atrocity; the most monstrous acts of bribery, oppression, and wrong were charged against him and proved against him. And although he disgorged some two hundred thousand dollars, I see it stated in a newspaper that the other day he purchased in the city of Philadelphia an establishment for which he paid down seventy-one thousand dollars. He was utterly poor when he entered this bureau, and yet, after all he yielded up, and after paying a fine of ten thousand dollars, it seems that still he is rich.

"And this was not an isolated case; far from it. On the contrary, I say, and I may endeavor on a future occasion to show in detail, that there never has been in human history a greater mockery and a greater burlesque upon honest administration than the conduct of this bureau, taking the whole country together. It will turn out that of the seven or eight hundred thousand men for whom—not to whom, because they did not get them—enormous bounties were paid, not to exceed three hundred thousand, I believe not two hundred thousand, ever reached the front."

I wonder whose fault that was. I never understood that it was part of the duties of a provost marshal general to send men to the field; but I did suppose that that duty was assigned to quite a different branch of the public service.

Following that came some remarks from Mr. Blaine, a member of the military committee, a gentleman of distinction and ability, in defence of General Fry; and I read from Mr. Conkling, in reply to Mr. Blaine:

"I say to him further, that I mean to take no advantage such as he attributes

of the privileges of this place or of the absence of General Fry. On the contrary, I am ready to avow what I have here declared anywhere. I have stated facts for which I am willing to be held responsible at all times and places.

* * * I said what I felt bound to say, speaking not only for my own constituents, but for other constituencies in New York whose representatives hear me. I could not remain silent when I know that in my own district and elsewhere men who stood up honestly and attempted to resist 'bounty-jumpers' and thieves were stricken down and trodden under foot by General Fry. I affirm that the only way to acquit him of venality is to convict him of the most incredible incompetency. I am responsible for that, sir, everywhere. * * *

Now, sir, as to the official conduct of this officer, I have deemed it proper to refer to it because the practical and real question is whether he personally is to continue in his present place. I have stated but a very small part of what I know from my own investigation of the matter. And I want it distinctly understood, that in my judgment no officer of this government holding a similar position has done so much harm and so little good as the officer of whom I am speaking. If that is offensive to anybody, so be it. To the particular individual to whom it may give most offence I will answer not here but elsewhere, when it becomes necessary."

Mr. CONKLING. I want to call the attention of the committee to the fact that while Mr. Blaine stated in the House that I had struck out the words "not here but elsewhere," they are actually in the printed report of my remarks.

Mr. RIDDLE. I leave to Mr. Blaine to notice this remark in that "elsewhere." I have nothing whatever to do with that speech as from a member of Congress, neither proposing to call it in question "here or elsewhere" any further than it is made to bear directly upon the grave matters before the committee. It would seem as if it was not made either hastily or unadvisedly, but as if elaborately prepared and studied. The grandeur, the pomp and magnificence of language with which these sentences take the field and make the onset, evince certainly the happiest command of that style of expression or great previous elaboration. But in whatever language they are uttered, or for whatever purpose, they, taken together, amount to the most deliberate attack, charging the gravest and grossest offences that have ever been made on a public officer in the annals of free debate on the floor of Congress. There is in conclusion this distinct and direct avowal, to which I wish the attention of the committee, that those charges contained but *a portion* of what the orator declares is within his own knowledge, and he avows that he derived that knowledge from an investigation of the facts connected with the conduct of the officer against whom he inveighs. He makes the charge on his personal knowledge and avows his personal responsibility at all times and all places. I believe that speech was made on the 25th of April, and appeared in the Globe on the 26th. On the 27th the letter under consideration from General Fry to Mr. Blaine was written. Of course this committee does not attempt to try General Fry as an officer of the military service for writing that letter. Whether he was guilty of a violation of orders or of a violation of the laws and regulations of the department is a matter which I suppose the committee, any further than it bears upon the investigation before it, will leave to his superior officers. Nor yet am I aware that General Fry is to be charged with any violation of propriety, if any such was involved, nor with any breach of the privileges of Congress, in the reception and reading of that letter in the House. With the writing and the committing it to the hands of the messenger, to be carried to him to whom it was addressed, all control over it ceased on the part of General Fry. If it involved any insult to Congress, or if there was any violation of privilege in its being read, pardon me if I submit that the House was a party to it, for it was for the House to say whether it should be or should not be read. But with its statements and with its charges, so far as they involve the personal character and position of a member of the

House, the committee does have to do, and so far as that branch of the investigation is concerned I leave it entirely in the hands of the committee, limiting my labors to the inquiry as to the grounds and as to the sufficiency of the grounds on which the letter itself was written.

I beg now to read a single passage further in this debate. The reply of Mr. Conkling to Mr. Blaine on the 25th, seemed, in the view of that gentleman himself, to be characterized by warmth, and he felt himself called upon to say a word in its excuse :

"It is not my disposition, Mr. Speaker, to engage in personal controversy upon this floor; but when any member forgets himself so far as to impute unworthy motives and resentments to me, when my motives and resentments are wholly foreign to the matter before the House, he must expect a rebuff; and when he asserts offensively that I have had personal quarrels with a person whose administration and public acts are under consideration, and that I have been worsted in these quarrels, and that, too, before the Secretary of War and by the Secretary of War, and when that statement has no foundation in fact, I think the Chair and the House will agree with me that something is to be pardoned to the earnestness of the occasion."

I think so, too, and only beg that so much of this shall be borne in mind when the committee comes to deal with General Fry for the writing of that letter, and that the committee will recollect that something is to be pardoned to the feelings and circumstances under which it was written. If it is allowable, in the freedom of debate, in the great forum of the nation, where men meet face to face and in the eye of the world, to evince a manly warmth in repelling an imputation on a man's honor, most clearly the same rule is to be extended toward and over a military officer outside who could not be heard there, whose profession makes him peculiarly alive and sensitive to imputations on his honor, when he comes, as he was obliged to come, to the consideration and discussion and utterance of the statements made in that letter. Something, I say, is to be pardoned to the feelings engendered by the amazing attack made upon him—an attack which was, as I assert, utterly groundless and causeless.

It is not my purpose to tax the patience of the committee under the extreme lassitude which attends the mercury at ninety in the shade, to read every portion and comment upon each, of that letter, but only so much of it as seems directly to inculcate Mr. Conkling, and to read in that or some other connexion the speech in reply to it, and then call the attention of the committee to some papers and documents, and make some slight reference to the verbal testimony supposed to have something to do with some part of this issue. Passing over the first paragraph of the letter gracefully expressing the obligation of the writer to Mr. Blaine, I read—

"My official intercourse with representatives in Congress during the past three years has been constant, and in many cases intimate, and, with the solitary exception of Mr. Conkling, it has been marked, so far as I remember, by mutual honor and fair dealing. Mr. Conkling being thus an exception, it is my purpose to give a brief summary of his connexion and intercourse with this bureau."

Now, it would seem that under the pressure of these astonishing charges made upon that officer he was certainly warranted in availing himself of the information he had, to correct the statements derogatory to him which had fallen from the mouth of Mr. Conkling. He pens that paragraph, hardly anticipating, perhaps, that a committee would ever be called upon to decide whether it was exactly true or not. However that may be, the committee has decided that it lies outside of the field of its investigations. I have not a word to say about the proposition of Mr. Conkling to produce Mr. Ward and others to prove that this was, as he characterized it, a deliberate falsehood. It is only sufficient for me to remind the committee that we were not in the way of that investigation. I

pass now to the third paragraph, which covers a qualified attack, as it is called upon Mr. Conkling :

"In the summer of 1863 Mr. Conkling made a case for himself by telegraphing to the War Department that the provost marshal of his district required legal advice, which he was thereupon empowered to give."

In Mr. Conkling's speech, in reply to this, occur these paragraphs :

"It is stated by this officer, as the House has heard, that upon a certain occasion I telegraphed to the Secretary of War, in the language of the communication, as I caught it, in order 'to make a case for myself;' that is, to procure my own professional employment."

He says that a deserter had been arrested in the district of Mr. Conkling, in the State of New York; that he did telegraph the circumstances, the substance of which was that "in the absence of those of us on whom the provost marshal can rely," a habeas corpus had issued, and he goes on to state that the provost marshal had applied to the district attorney and his assistant without avail; and the Secretary is requested to indicate what shall be done, and what course shall be pursued. The Secretary telegraphs back that Mr. Conkling shall be retained. Now, I submit to this committee that, without any reflection on Mr. Conkling or anybody else, Mr. Conkling's own statement substantiates the charge (if charge it be) of General Fry. I am not here to criticise the conduct of any of those parties. The telegram of Mr. Conkling would seem to imply, in the first place, that if they had been there—the other gentlemen and himself, who were wont to be applied to for advice in such matters—this exigency, the application to the Secretary, would not have arisen. Then, on their return, why did the exigency arise? Was it anything unusual to find during the last four or five years gentlemen, with or without official position, devoting themselves generously and patriotically to the service of the government in the exercise of their profession, performing very considerable labor and valuable services by permitting themselves to be employed, without a flourish of telegraphic despatches to the head of the government; without thought or desire that men should ever know of their labors or motives, they have gone before various tribunals, and argued great and grave questions, which were something more than mere dead law, but were the throbbing pulsations of the body politic itself in its great agony. How many like services have been rendered without thought either of instructions or employment from the head of the department, or without seeking to parade them on the floor of Congress or elsewhere as great and important services! It was a matter of taste. This was brought to the notice of the War Department by Mr. Conkling, and it resulted in the retaining of Mr. Conkling; and most indubitably the modesty of that gentleman has not forbidden his making the most of it. Very distinguished gentlemen have been brought here from New York to testify to the distinguished ability with which, of course, Mr. Conkling presented that case before the tribunals. And that is all there is of it. I submit that, in the first place, there is no grave or weighty charge in the language of this letter; and I submit, in the second place, that to the full scope of a just construction of this language, it is warranted by the statement of the gentleman himself in reply to it on the floor of the House.

I now come to the fourth paragraph of the letter, which contains the sum total of the criminations of this letter. If I read the whole of it in connexion, I shall be obliged to discuss some of the matters in detail, and, perhaps, not exactly in the connexion in which they here stand.

"In April, 1865, Mr. Charles A. Dana, then Assistant Secretary of War, without notifying me, had Mr. Conkling appointed to investigate all frauds in enlistments in western New York, with the stipulation that he should be commissioned judge advocate for the prosecution of any cases brought to trial, and he was so appointed to prosecute, before a general court-martial, Major J. A. Haddock. Mr. Dana vested him, by several orders issued in the name of the

Secretary of War, without the sanction of Mr. Stanton, with the most extraordinary powers. Among these was the right to examine the despatches in all telegraph offices in the western division of New York, which enabled a violation of the sanctity of personal and business correspondence."

I am obliged to deal with this thing, in this summing up, in the absence of the testimony both of the Secretary of War and of Mr. Dana. It is not before us. Some of the gentlemen of the committee were present when that testimony was taken, but, for myself, I have been unable to see the written testimony of either of those gentlemen since. The first part of the statement in this paragraph was met by Mr. Dana with the explicit declaration that it was false; and the second statement contained in it was also characterized by Mr. Dana as containing a falsehood. I beg to say of that gentleman and his testimony, that his manner on that occasion was extremely excited, as much as if General Fry's letter had been then for the first time brought to his notice, as if he had never heard of it before, and as if he was speaking out of the fresh exuberance of the feeling of a man for the first time made aware of supposed injury. He declared that he did testify under a strong degree of feeling, but I submit that there was nothing in the manner of conducting the cross-examination which could have warranted any emotion of that kind. What is the character of this first statement in the letter? It is that in April, 1865, Mr. Charles A. Dana, without notifying him (General Fry,) did procure the appointment of the gentleman (Mr. Conkling.) Mr. Conkling himself, in reply to that statement, seems to have fallen into an error which was pardonable under the heat incident to the occasion. I read from his speech of the 30th:

"Again: this writer states that I was appointed, if I understand it aright, without the knowledge or assent of the Secretary of War, but by the Assistant Secretary, Mr. Dana, judge advocate for a certain purpose."

He returns to that again, and repeats that portion of it in the succeeding paragraph, showing that he had fallen into a misapprehension: that is to say, when General Fry speaks of his having been appointed by Mr. Dana without the knowledge or consent of *him* (General Fry) it was understood by the gentleman, and so repelled, as if it was said to have been an appointment by Mr. Dana, without the knowledge or consent of *the Secretary of War*. That is an error which it is not necessary to follow.

Now, so far as Mr. Conkling is concerned, inasmuch as the act of appointment was not his, but that of the Secretary through Mr. Dana, it is no imputation on him to say that Mr. Dana procured his appointment. It might be an imputation upon Mr. Dana, if improperly procured, and so Mr. Dana understood it, and resented it with quite as much warmth as the occasion required. The most that can be said of it if it is not true—as it seemingly is not by the testimony of the Secretary of War and of Mr. Dana himself—is, that so far as General Fry was concerned, it is one of those immaterial statements which might have been made without any grave imputation on his integrity. But this thing General Fry knew (and it is fully sustained by the testimony) that there was, preceding that appointment, very intimate relations existing between Mr. Dana and Mr. Conkling. That came to the notice of General Fry, because the correspondence that had taken place between them was referred to General Fry; and really, so far as this investigation is concerned, it is in no way material whether Mr. Dana procured the appointment of Mr. Conkling, or whether the Secretary of War, acting entirely independent and outside of any suggestions from Mr. Dana, did it on his own motion. That the appointment was made at the time without consulting General Fry about it is abundantly in proof; and I do not understand that that part of the letter is very seriously complained of. The fact of the appointment is abundantly in proof, both on the part of the gentleman and ourselves, and is evidenced by this writing.

“WAR DEPARTMENT,

“*Washington City, April 3, 1865.*

“SIR: I am instructed by the Secretary of War to authorize you to investigate all cases of fraud in the provost marshal's department of the western division of New York, and all misdemeanors connected with recruiting. You will from time to time make report to this department of the progress of your labors, and will apply for any special authority for which you may have occasion. The Judge Advocate General will be instructed to issue to you an appointment as special judge advocate, for the prosecution of any cases that may be brought to trial before a military tribunal. You will also appear in behalf of this department in any cases that it may be deemed more expedient to bring before the civil tribunals.

“Very respectfully, your obedient servant,

“C. A. DANA,

“*Assistant Secretary of War.*

“Hon. ROSCOE CONKLING.”

The appointment was certainly made by Mr. Dana, if not procured to be made by him, as the appointment on its face shows.

So far as that appointment is concerned, and however much of falsehood may be condensed in this concentrated extract of all falsehoods and libels, (according to the gentleman from New York,) there is, indubitably, this much of truth in it, at the least—that the commission itself, on its face, contains precisely the provision and which was said to have been embodied in it in this letter of General Fry. And as that is the authority under which Mr. Conkling acted, so far as he did act, and inasmuch as it was authority to him to act where, in the estimation of General Fry, he should have acted but did not, it becomes in that view somewhat material. But it has been said that notwithstanding the fullness of the powers thus conferred, it really never was the design of the employers of Mr. Conkling, or of Mr. Conkling himself under that employment, to do but one single thing, to wit: carry on the investigation against Major Haddock and bring him to trial. If anything at all is established by the testimony of Mr. Dana and of Mr. Stanton it is this—that the last thing which transpired between them on one side, and Mr. Conkling on the other was the devising of the contract, and the reducing to writing the full and complete measure of the understanding of the parties by whom it was made, and that this instrument was the result. If it was a nice question here as to the duties and powers of Mr. Conkling, and if it did not arise in this collateral manner between Mr. Conkling and a third party, that instrument would be, under ordinary legal construction, the precise measure of the obligation on the one part and of the rights growing out of it on the other, which could not be changed by proof. Was it, at that time, the understanding of Mr. Conkling that his sole duties were to be limited to the prosecution of Major Haddock? Why, if the committee please, while Mr. Conkling was still in Washington, there was placed in his hands a report by Major Ludington, (see evidence,) with accompanying reports of officers, directly charging malversation and corruption in office in a greater or less degree on Captain Crandall, and the other members of the board of enrolment of the 21st district of New York, and this gentleman—Mr. Conkling—whose sole appointment was to prosecute Major Haddock, as he now says, on the very day of his appointment puts a totally different construction upon it! I will read to the committee a letter which he wrote on the very day that he received his appointment, addressed to the Secretary of War:

“WAR DEPARTMENT,

“*Washington City, April 3, 1865.*

“SIR: Having been authorized and requested by the Secretary of War to examine certain transactions in the Bureau of the Provost Marshal General

relating to the western division of the State of New York, I have the honor to state that I have carefully read all the papers furnished to me, as on file, touching the provost marshal of the 21st district, and, having done so, from the contents of said papers, and also from my own knowledge of the facts and of the men connected with them, I advise and recommend that the order of suspension of Peter B. Crandall and the other members of the enrolment board be revoked, and the said board reinstated.

“ROSCOE CONKLING.”

That is my reply to the gentleman when he undertakes to say that his entire duties were to begin with, be limited to, and end with, the official investigation into the conduct of Major Haddock. The very day of the date of that instrument he enters on the discharge of other duties here at the capital, and passes upon a matter of grave charges against other functionaries, and recommends that those officers who had been suspended should be restored to office.

Mr. WARNER. Do you claim that that was done as a part of his official duty?

Mr. RIDDLE. Certainly. He says it is. He commences by stating “that having been appointed” to do it, he proceeds and does it, and that is the manner in which he does it. But that is not quite all. I know that at that time it was not understood either by him or by the War Department that his duties were to be limited to this matter of Major Haddock. Having performed that labor faithfully and ably, and in a manner which reflected credit upon him, no doubt, at the close of that investigation, and while he is dealing with the charges in this letter, he goes on to state, in the presence of his fellows on the floor of the House, his further construction of what he himself understood he was to do by that appointment. I read from his speech of the 30th :

“The investigation led, among other things, to the trial of this assistant provost marshal general [Major Haddock] of whom General Fry says so much and yet so little; a trial which alone consumed about eight weeks, at places distant from my home. When at last it was over I declined to go further, thinking my poor share had been done, and finding it destructive to my regular business to engage in trials so interminable and absorbing, and I made report to the War Department and to the district attorney of the United States of the results which had been reached.”

What is this? Having completed the business which was assigned to him by his appointment, “I made report thereof to the War Department?”

Not by any manner of means. Anything and everything else in the world but that. This is also shown by, “when at last it was over, I declined to go further.”

Why; because he had performed all the duties assigned to him?—Not at all; but “thinking my poor share had been done, and finding it *destructive to my regular business to engage in trials so interminable and absorbing.*”

Never, so far as the first official action of this gentleman was concerned under that commission, and so far as the last words with which he proclaims and describes the last act of his duties under it, was there any such construction to be attached to it as contended for before you. I think that is about all that need be said on that point.

Mr. CONKLING. You seem to forget that both Mr. Dana and Mr. Stanton testified that there were accomplices of this man Haddock, and that their trial would come within the purview of my appointment.

Mr. RIDDLE. I do recollect exactly the testimony of those gentlemen; but it does not help or change the understanding of Mr. Conkling as to his duties under that commission, as evidenced by his first act and by the declaration in which he announces the closing of his last official act.

The next statement in this letter of General Fry is, “Mr. Dana vested him

by several orders, without the sanction of Mr. Stanton, with the most extraordinary powers."

That, says Mr. Dana, is false. This remark has reference to the two orders of April 3, 1865. That those orders were prepared and written and delivered by Mr. Dana or by some of his employés, without the knowledge of Mr. Stanton, is proven by the testimony of both Mr. Dana and Mr. Stanton. They were said to have vested him with "extraordinary powers without the sanction of the Secretary of War." I know that the Secretary of War, in the somewhat elaborate sworn argument which he delivered to this committee, says that, if these papers had been submitted to him, he doubtless should have approved them. But they never were; and so, whether he would have sanctioned them or not, as a matter of fact he never did. But it was true, as General Fry declares, and as Mr. Dana denies, that Mr. Conkling was invested by those two orders with some powers, extraordinary or otherwise, without the knowledge and, of course, without the sanction of the Secretary of War. Well, were they extraordinary powers? General Fry gave both in his letter, and they show for themselves; and when he said that they conveyed extraordinary powers, he expressed an opinion, and gave the means for its correction if erroneous. The Secretary of War seems to suppose they were not extraordinary. I am not going to discuss this question of the exercise of extraordinary powers. I am among those who thought that almost everything that could be done in the furtherance of the great struggle had abundant sanction for its being done. I was very much disposed, in common with my fellow-citizens, to hold the President and heads of departments responsible, and never to inquire too curiously into the means which they employed. But if these two papers, or one of them, do not invest somebody with extraordinary powers, then that which is extraordinary, or rather that which was extraordinary, has, by use, come to be most ordinary, and hence has ceased to be what it was. There is no other way of reconciling this paper with any such definition of language, except by changing fundamentally the meaning of words. I read the paper:

"WAR DEPARTMENT,

" *Washington City, April 3, 1865.*

"Hon. Roscoe Conkling having been appointed by the Secretary of War to investigate transactions connected with recruiting in the western division of New York, all telegraph companies and operators are respectfully requested to afford him access to any despatches which he may require for the purpose of detecting frauds and bringing criminals to trial.

"By order of the Secretary of War:

"C. A. DANA,

" *Assistant Secretary of War.*"

Would some gentleman kindly inform me under what provision of the Constitution, or by what act of Congress, there ever was vested at any time in the Secretary of War, power to send his emissary to a telegraph office and to lay bare the confidential communications of every man who has had occasion to avail himself of this wonderful means of communication? There is no sanctity; there is no sanctuary where sanctity can rest—where the correspondence and secrets and confidential communications of parties can repose—if by the scratch of a pen of an Assistant Secretary of War, that sanctuary is to be laid open to the prying eyes and manipulating fingers of any official of the war or any other department. Telegraph companies and telegraph operators were "requested." We all understand pretty well what the "request" of the Secretary of War meant. It was immaterial in what language it was couched, under what cover of curious phraseology that fatal spring lurked; the request was binding, and, in its presence, all locks and bolts dissolved as they would break under a posi-

tive order. I do not undertake to say that the times did not require this. I am not here to argue the question as to whether the duty which devolved on Mr. Conkling did not require this power for the purpose of enabling him to do it. I do not undertake to say that any possible misuse of that power could have been made by him. That is not the matter I am discussing. But I am discussing whether General Fry is to be condemned as a libeller by the solemn action of the people's representatives, the conservators of their liberties, because he has had the audacity to charge that a power, which strips you bare and exposes not simply your person, but the most sacred secrets of your hearts to the prying gaze and the ribald jest of whoever for the time being is vested with the power to make a given examination for a given purpose, is an extraordinary power. I say that it is extraordinary. It is most extraordinary; and it will seem still more so as we go back to the good times when the people were what the great founders of the government declared they should be—crowned sovereigns. But these were times when the people's rights had to be in abeyance, and the great struggle has been, not what should be the standard of personal rights, not whether the writ of *habeas corpus* should go forth relieving men from the grip of lawless power, but whether the great foundations of the government—the great source and fountain of all law, from which emanates that indescribable and all pervading influence which we call “the public peace”—should survive. The question was whether that should exist, or whether men should be remitted to original chaos, to be recrystallized and reconstructed under new circumstances, favorable or adverse. In any event the power was extraordinary.

What next does General Fry state that is so much complained of? “For his services in that connexion Mr. Conkling received on the 9th of November last the modest fee of \$3,000. Whether, as is reported, he received from his district \$5,000 more, and from guilty parties additional fees, to prevent prosecutions, I am unable now to say.”

I am very frank to admit that a degree of excited feeling must have existed on the part of General Fry, or he would not have incorporated into this document what was itself an idle rumor and of which we have made no inquiry. He goes on to say:

“But, as *hereinafter shown*, he was as zealous in preventing prosecutions at Utica as in making them at Elmira,” &c. This “*hereinafter shown*” explains and limits precisely the application and meaning of these the most offensive statements of this letter, and must be remembered.

There are three or four lines here which impose upon me some labor, and I regret it the more as I find that I am not likely to bring my remarks into anything like the compass I had supposed they could be. Mr. Conkling says in reference to this statement:

“There is a statement, if I apprehend it aright, that some effort was made by me to have ‘concealment’—I think that was the word—in regard to the twenty-first congressional district. That is mere assertion. No circumstances are stated upon which it could be founded; therefore I cannot dissect it, but I pronounce the statement utterly and absolutely groundless—nothing whatever of truth can be found in it.”

Now there are some things here about which I am not going to say much. It has reached the committee in various shapes that charges involving, in a greater or less degree of turpitude, parties directly connected with the administration of the recruiting laws in the twenty-first district of New York, were made. Indeed, there seems to have been, whether rightfully or wrongfully, a very bad odor attaching particularly to this Utica district. It is found embodied in various reports, telegrams, and letters, so that it would seem to have called at least for investigation. If investigation should prove those charges to be groundless, then some official report from some person in authority should have been made

to put the matter right in the department; or if there was any degree of truth in them, then certainly some vigorous prosecution of the parties ought to have been entered upon; and, as shown, Mr. Conkling was the man appointed to do this.

The immediate foundation on which General Fry went for his statement was, in the first place, the official report of Major Turner, the official report of Major Ludington, the reports or letters of Lieutenant Lott, Colonel Axtell, and Colonel Tracy, and perhaps one or more reports or references, and the statements of Major Haddock. I do not propose to inquire whether, as a matter of fact, these various official reports embody absolute truth or not; I only know that they are not of that class of writings that are to be taken as unofficial and unworthy, and therefore entitled to no credit. They were not vague statements of newspaper scribblers or private libellers of the *la France* school, but they were reports of the inspecting and other officers of the army, of various grades, whose particular duties brought them to know of and to deal with the persons and things concerned, and who made direct official communications to the head of the department for his information and action. To what extent the officials of the War Department should have acted upon those statements in the exercise of their discretion is for themselves to decide. They have suspended men; they have dismissed men from the service; they have dealt with men in various ways, precisely as the exigencies of the service required, as made to appear by these reports. It is not always possible that the utmost scrutiny should precede every official action. The military department is exceedingly prompt; and when you find a subordinate officer who receives an order from his superior consulting with counsel as to whether he had better obey it, and whether there might not be somebody else who has got some right or interests in the subject of it, then I think it is about time that that official's services should be dispensed with, no matter what might be the particular circumstances of the particular case in which he acts. No other course can be tolerated in a military system.

There is a countercharge in the speech of Mr. Conkling to this part of the letter. It is alleged that this Major Haddock was the special official favorite and private pet of General Fry. It is much more than insinuated that at a time long prior to the official report of Major Ludington, there was within the power and control of General Fry this same sort of official information which made it incumbent upon him to act in reference to Major Haddock; but that so far from dealing with him, he persisted in sustaining and screening Major Haddock down to the time of his conviction and sentence, and even afterwards.

"The difference," says General Fry, "between Mr. Conkling and myself is, I desired to have investigation at Elmira and at Utica. He desired investigation at but one place; I wanted exposure at both; he wanted concealment at one."

What is the evidence bearing on these statements? I do not propose to call the attention of the committee to the personal relations or the political condition of Mr. Conkling himself. It can be appreciated, however, by every gentleman of the committee. It is known that members of Congress, especially those whose sympathies are with the administration, are usually permitted to indicate the direction which patronage shall take; and, to a certain extent, the political fortunes of those who support the administration follow the fortunes of the administration itself, and you know that that had its ups and downs just as the fortunes of the war fluctuated. If a gentleman holding a seat in Congress had indicated to the President certain parties to be the provost marshal, for instance, and to constitute the board of enrolment, it is indubitable that, in the public estimation, he is to be held responsible, to a certain extent, for the conduct of those parties.

To say that Mr. Conkling, the representative from the 21st district of New York, had no personal interest in anything pending in the War Department, (as

Mr. Dana undertook to say,) or that he did not feel a lively political and personal interest in the status which his appointees should occupy in that district, is utterly absurd. The fact that he did is too plain, too palpable, to be either established or controverted by proof, or sustained or overthrown by argument. Here the entire enrolling board of his district had fallen under grave official censure. The members of it are, to a certain extent, his appointees, and they are suspended from office. That is the condition of things when he accepts this commission. There are charges which have reached the Provost Marshal General already, involving questions as to the culpability of Major Haddock, and a great variety of other persons are more or less mixed up in them. It is in regard to all of these that this appointment of Mr. Conkling is made; and whatever may be the present understanding of the Secretary of War and Mr. Dana in reference to the scope of Mr. Conkling's authority, and the obligations under which he should exercise it, this appointment, on its face, the only information General Fry had on the subject, justified him in believing that this entire field was to be the subject of Mr. Conkling's labors and investigations.

What was the first thing Mr. Conkling did? The first part of his official duties that he attempted to execute was performed here at the capital. He took up the reports of Major Ludington and other official statements bearing upon the maladministration of his own appointees, and disposed of them in the most summary manner in the world. He undertook to declare, in the face of those papers, from his own personal knowledge, that the facts therein contained were all false, that these men were pure, and he recommends that there shall be no investigations and no inquiry; that those grave official charges shall be treated as if they did not exist! Whether the men who made the reports were corrupt or mistaken, those parties, at all events, were, according to Mr. Conkling, entitled to the official consideration and confidence of the chief of the bureau, and he recommends that they be restored to their positions.

Now, I shall beg to know—I do in all sincerity beg to know—of the grave and considerate gentlemen who are the official organs of the House to make this investigation and to pronounce, to a certain extent, what will be the ultimate judgment of the House upon this matter—when the prompt action of Mr. Conkling contemporaneous with his appointment, in reference to the cases of his own appointees, is remembered, restoring them to office and trust, with no semblance of investigation, and when it is also remembered that at his suggestion Major Haddock was put under immediate arrest at Elmira without General Fry's knowledge, and his office closed and its important business shut off—why might not General Fry be led to suppose that Mr. Conkling did not want investigation at Utica, but preferred that it should take place at Elmira?

So far as the outside world could see, and so far as these official reports reveal, that twenty-first district was a seething cauldron of corruption and fraud, in which there was nothing but rottenness. That was its universal reputation; that was its odor. It was distinguished, pre-eminent for its badness, and that, too, in communities in which, as has dropped out in this investigation, a thousand men deserted from a single regiment. How should the Provost Marshal General feel and think with his great and grave duties upon him, with hundreds of thousands of the brave men who had been sent to the field melting away in the fierce flame of battle, or wasting and perishing in unwholesome hospitals, and when he was the medium through whose office alone could the great, everlasting reserve of people march to their places in the field? With this weight and burden, what should he feel, and how should he think, and what must not he be permitted to believe, when by his own action, upon the amplest authority, as embodied in official reports, he suspends an enrolling board, and a newly appointed officer of the government comes in, and without any communication with him, without any inquiry, five hundred miles from the scene, by the first dash of his official pen, recommends that those parties

be restored to duty, and at the same time vigorously directs public attention in another direction by an open prosecution of an offender in another part of the country? What under those circumstances is not General Fry permitted to feel, and what opinion must he not be permitted to express? Was he not justified in believing and saying that this newly appointed official wished to prosecute at Elmira, and did not wish to prosecute at Utica? that he (General Fry) desired exposure at both places, while Mr. Conkling desired concealment at one? If you were to look outside of those papers and catch a glimpse of things that actually existed below the surface, what do you find? Do you find, save as incidentally involved in the investigation of Major Haddock, that the malversations and corruptions of office at Utica ever received at Mr. Conkling's hands the slightest, the coldest, most indifferent touch? While he is directed by his appointment to report from time to time to the department respecting his doings, did he at any time, elaborately or otherwise, report that he ever investigated that portion of the field that lay about Utica? Did he sit down and deliver in any form, either to the Secretary of War or to Mr. Dana, or to General Fry, what was the exact and actual state of things there? Never in any way or form, save, as I have before said, incidentally in the investigation of the case of Major Haddock; and never, save in that communication of the 3d of April, did he, after the acceptance of that commission, notify General Fry or anybody else of the state of things at Utica. Then did he not seem to want concealment of them?

When you look into these countercharges contained in the speech of Mr. Conkling in reply to this part of the letter, involving General Fry in some sort of complicity with Major Haddock, you will find the answer to them contained in his recommendation to suspend that officer the day he received Major Ludington's report, and in the orders and despatches put in evidence, showing that already he was having the matter with relation to Major Haddock investigated. He did get a report in a telegraphic despatch from Colonel Baker, implicating Major Haddock, and telegraphed for the facts. Major Haddock had his confidence undoubtedly. It is not the first time an undeserving officer has had the confidence of his superiors. I need not stop to name familiar, and, so to speak, almost magnanimous illustrations of that singular and almost fatal confidence, which men in high places, not even excepting the President, have extended, at various times, to men whom the outside world knew to be unworthy of it. I beg you will reread one or two of these despatches to Colonel Baker and others, put in evidence on this point directing investigation, and directing them to furnish facts without regard as to whom they might implicate, or where suspicion might fall. Give him the facts, was what General Fry wanted. I submit there is no foundation for this charge that General Fry sustained Major Haddock, that he kept in place that rotten and corrupt official, long after he knew of his corruption. The very moment General Fry received this official report (Ludington's) from an inspector who had been sent to Elmira, he acted promptly, and in no shape lent himself or his influence to screen or shelter Major Haddock from the fullest investigation, or from the blow that was falling so justly upon his head, all of which Mr. Conkling well knew. And it is a matter of astonishment to all who have heard these denunciations of Major Haddock by Mr. Conkling that he should have received a mere nominal sentence. A fine of \$10,000 seems a most imperfect measure of justice, the poorest and shabbiest mockery of it, when we recall the severity with which minor offenders were dealt with by military courts, with fines imposed upon them, sometimes, that would swallow up great fortunes. That this man should have received such a light sentence seems a reflection either upon the court itself or upon the case that was made against him by Mr. Conkling. But, as I said before, I do not propose to go outside of those papers. It was brought to the notice of this committee that certain facts might be proved by certain witnesses as

to the condition of affairs at Utica, and the committee will see that a failure to produce testimony on that point is not to be regarded as proof that there was an absence of corrupt practices there. We know nothing of any of them save from these reports. We had no means of knowing beyond. We are here at Washington, while, on the contrary, the distinguished gentleman, Mr. Conkling, lives there. The people are his people; the ground is his demesne. He is their favorite, their chosen; they look to him for countenance and protection, and he looks to them for support. This matter of the doings and misdoings at Utica was no part of our case save as embodied in these reports; we gave the names of witnesses by whom they might have been proven, as we were informed, to the committee, with a statement of what they would testify to, and there we left that matter.

I read again from the letter of General Fry :

"As to the *animus* of Mr. Conkling's calumnious assault upon me, it is true (notwithstanding his assertion that he had no personal quarrels with me) that the differences between him and myself arose altogether from my unwillingness to gratify him in certain matters in which he had a strong personal interest."

I remember very well that Mr Dana says that he did not know that Mr. Conkling had any personal interest in anything in the War Department. I recollect, also, that that gentleman said he was enabled to testify to the details of a certain conversation, because it happened to be at the time that Richmond fell.

"It is true, also, (says General Fry,) that he (Mr. Conkling) was foiled in his efforts to obtain undue concessions from my bureau, and to discredit me in the eyes of my superiors."

In Mr. Conkling's letter to Mr. Dana, of March 29, 1865, which is given in evidence at length, the production of which so surprised Mr. Dana, occurs this passage :

"You may smile at my earnestness, but if you knew exactly what I know, your indignation would be as great as mine; and mine goes to just that extent that I feel, as to the Provost Marshal General, *that we are at the mercy and the dictation of thieves*; and if I live, and can do so, I will get at the bottom of this particular proceeding, and give it such a ventilation as will conduce to the general health."

It was to be a great sanitary movement. I said (and on reflection I directed the reporter to let the language stand) that, in a certain letter which this gentleman had written, he, in substance, characterized the chief of the Provost Marshal's bureau as a chief of thieves. That passage is the one to which I referred for the assertion, and I submit that it sustains me. "I feel, with reference to the Provost Marshal General, that we are at the mercy and dictation of thieves." Who dictates? Who but the chief? And "we" are "at the mercy and dictation of thieves."

General Fry says that Mr. Conkling failed. He says :

"It is true that he was foiled in his efforts to obtain undue concessions from my bureau, and to discredit me in the eyes of my superiors."

In Mr. Conkling's reply to that he says :

"Now, what does the provost marshal say to give color to the statement that, independent of this, anything had taken place which will help out the assertion of "quarrels," and that I was worsted? What does he state? That Captain Richardson, a provost marshal in my district, was removed. So he was. He was removed without notice and without charges. He was removed, as it turned out, on the report of Haddock and the accusation of a man who is himself to be tried in a few weeks for such frauds as he charged upon Captain Richardson."

If that is true, and, as he had a special commission to investigate these matters, why did he not make it to appear officially, instead of reserving it for his

exposé on the floor of Congress?—which he might never have had an opportunity to make. He says further of Richardson's removal:

"The facts were in part made known to me, and, in common with some of the first citizens of my district, I represented to the War Department and to the President, if that was the form of the petition, that this man had been removed without notice and on secret information. We thought he should be heard; that there should be an investigation in regard to it. That is the beginning and end of all I had to say or to do with the removal of Captain Joseph P. Richardson."

That exactly corroborates everything which the Provost Marshal General has said in his letter. He said that Captain Richardson was relieved, and that Mr. Conkling made efforts to have certain action taken in regard to it, in which he was "foiled," as he was. Here are three letters of Mr. Conkling—two to the Provost Marshal General, and one of three or four pages in length to the President—complaining strongly of the course which had been pursued in reference to Captain Richardson. Perhaps Mr. Conkling was entirely in the right. Perhaps Captain Richardson was one of the most persecuted men in the State of New York, but that is not the question. The question as made here by the Provost Marshal General in this letter is that Mr. Conkling failed to procure any modification of the course of the provost marshal in reference to Captain Richardson, and Mr. Conkling does not claim that he did not fail.

General Fry says further:

"The second issue was as to the restoring of Captain Crandall, the second provost marshal of the district, after I had secured his removal from duty on the recommendation of Major Ludington, who thoroughly inspected the district and reported that, though not legally guilty, he had morally perpetrated a most glaring and inexcusable fraud on the government he was sworn to serve, and that he had quieted his conscience by casuistry, and regulated his actions by the counsel of unscrupulous legal advisers. Mr. Conkling failed to get Captain Crandall restored, and the officer selected by me continued in charge of the business until the office was closed."

In relation to that Mr. Conkling says:

"I was saying that Peter B. Crandall was appointed provost marshal. He was appointed upon the recommendation of the most honored and trusted of our citizens without my having any part in his selection. I had no part or lot in it. It was made entirely by others."

Is that exactly true? Let us see if there is not some way of refreshing the recollection of the gentleman in reference to it. In that celebrated letter, addressed by Peter B. Crandall to Mr. Conkling after his suspension, Mr. Crandall himself seems to have taken an altogether different view of his appointment, and of the means by which it was brought about, for he commences by declaring that it is to the kindness of Mr. Conkling that he owed his appointment. He is becomingly grateful, and expresses that feeling in appropriate and fitting language. I will now read a paragraph from the letter of Mr. Conkling to the President, dated January 11, 1865:

"SIR: * * * After much consultation among the leading citizens in reference to a suitable person to be appointed provost marshal of this district, &c., opinion points to Peter B. Crandall for the place. He is a thoroughly honest man, and I concur in recommending his appointment.

"I have the honor, &c.,

"ROSCOE CONKLING."

"The PRESIDENT."

And yet Mr. Conkling says "I had no part or lot in it."

MR. CONKLING. Do you read that (the extract from his speech) exactly as it is?

Mr. RIDDLE. I believe I read it correctly.

Mr. CONKLING. If you do so read it, I will characterize it.

Mr. RIDDLE. I will read it again: "I was saying that Peter B. Crandall was appointed provost marshal. He was appointed upon the recommendation of the most honored and trusted of our citizens, without my having any part in his selection. I had no part or lot in it. It was made entirely by others." That letter (Conkling's) is to go for what it is worth. It was intended to convey, and did convey to the department, that this man had the approval of Roscoe Conkling. Without his concurrence in the selection, and his recommendation of it, Crandall would never have been appointed. The recommendation was made, and Crandall was appointed, solely and exclusively on that action of Mr. Conkling. In his speech an effort is made to show that he had nothing whatever to do with the matter of his appointment. If the gentleman wishes to characterize that or anything else, I say he may do so in his own terms.

Mr. CONKLING. Not now; but if you had persisted in that other statement intentionally, I certainly would have characterized that.

Mr. RIDDLE. There is no use of dilly-dallying shilly-shallying like that, and talking of saying or doing something. Does not Peter B. Crandall know to whom he is indebted for his appointment? Did he not, in his own letter, covered by Mr. Conkling's own frank, make the solemn declaration that he, Peter B. Crandall, owed his appointment to the kindness and favor of this man—Conkling?

Mr. CONKLING. Why do you say that, and why do you so refer to it, when it says the contrary?

Mr. RIDDLE. Indeed! I read, to the gentleman's confusion, all that is said about it in Crandall's letter. These are his words: "This appointment I owe to your kindness, and to the favorable opinion entertained of me by yourself and other prominent gentlemen of the county."

Now, what does the gentleman mean by coming into the House and saying he had nothing to do with the appointment of this man? And what does he mean by these interrupting remarks?

Mr. CONKLING. What does the gentleman mean by saying he was appointed exclusively through my solicitation? I have not said I had nothing to do with the appointment.

Mr. RIDDLE. I do not mean to do the gentleman injustice, but I mean to produce this point in its force, and I undertake to say that a fair construction of the speech made in the House in reply to that letter is that he had nothing to do with the appointment; and in that letter it is said by Crandall himself that he owes his appointment to the kindness of Mr. Conkling, and I mean to say that Crandall was his creature. He, Conkling, made a direct effort, both by letter and here in Washington, to have Peter B. Crandall, when suspended, restored, and just exactly as the Provost Marshal General says in his letter, and he failed in it. That, Conkling does not deny in his speech in reply. He did fail, and that was a second cause for quarrel.

I say, then, that so far from there being any cause for characterizing that letter, or any portion of it, as untrue or false either in design or fact, the proof is indubitable that it is true. That it was written strongly; that there may have been perhaps an inciting motive in its writing, growing out of what the Provost Marshal General considered, and what every true man will consider, a great and causeless provocation, I will not undertake to deny; but when he states that one cause of the difficulty between them was in reference to Captain Richardson, he tells the truth.

When he says again that a second cause of difficulty was that Crandall was suspended, and when Mr. Conkling desired that he should be restored, he remained suspended, that is also true. Mr. Conkling made every effort to have

him restored, and failed—undeniably and ignominiously failed—and he felt the failure.

As to the third issue the letter says :

“The third issue was as to the government’s employing counsel to defend Captain Crandall after he had been relieved and had carried with him, in violation of the orders of the department, some twenty thousand dollars, local bounty deposited with him in behalf of recruits, and in regard to which he got into litigation. In this Mr. Conkling failed. Counsel has not, to my knowledge, been authorized, nor have any lawyers been paid by the government in that suit.”

Is not that true, and true as stated? Let us see what the honorable gentleman himself says about it in reply :

“One thing more is referred to in connexion with Captain Crandall. He had taken and held, and persevered in holding, \$20,000 of bonds which were claimed of him by a bounty broker. He said they belonged to the government of the United States, because the man had deserted for whom these bonds were hypothecated, and he would never surrender them to the claimant until he was compelled to do it by law. He was sued, and I wrote several times to the War Department recommending the Secretary of War to look into the facts himself and see whether the bonds might not be held, as I thought they should be held, by the government. This is all I had to do with that.

“The cause was subsequently tried. I had nothing to do with it. The counsel was a gentleman whose name appears in the papers read, a citizen honored in every walk of life, and Captain Crandall was sustained in holding the bonds, the court deciding that he did what should have been done, and that he ought not to have delivered them up. That is the entire of that transaction.”

I know of no reason why I should not leave this third issue to rest here. Indeed, the statement of General Fry is now corroborated in every material particular by the answer to it. Just what authority can be found in that reply of Mr. Conkling to that statement of General Fry, for the course Crandall pursued in reference to the bonds, is not apparent. Incidentally, the conduct of Captain Crandall, in withholding the bonds when ordered to deliver them up to a successor, is a matter of no consideration here. It does not matter to this committee whether Captain Crandall was guilty of a disobedience of orders, or what those orders were. Crandall is referred to solely for the purpose of developing the connexion that Conkling had with the transaction.

It has been made, however, the subject of a great deal of inquiry here, one way or another. Several gentlemen have been brought to explain the course of that litigation, why it was litigated, and everything in connexion with it, and all in the interest of Mr. Conkling. But, if the conduct of Crandall was really the subject of investigation, it would be a very grave question how far a military officer could stop to inquire into the exact legal bearing of an order he was commanded to execute—whether, when an officer on the field, for instance, was ordered to march upon the enemy and deliver his fire, he could stop to deliberate about the ownership of the muskets, and take legal advice as to whether he could safely use cartridges which, perhaps, somebody had a lien upon. The very statement Mr. Conkling makes, as well as all that appears of this whole transaction, shows that, as a military officer, Crandall had no excuse for withholding those bonds from the government. If the result of the litigation should be, and a judicial judgment should find, that somebody else was entitled to the bonds, that would perhaps give some color of excuse for his course in disobeying the orders of his superiors, and withholding them. But the judgment already pronounced in this matter decides that the bonds belonged to the government, and hence Crandall is judicially condemned for disobeying General Fry’s orders.

There is one other statement in this letter to which I must advert. As al-

ready appears, Mr. Conkling was authorized to make investigations in the western division of New York, and by his speech of the 25th, which I have recurred to for another purpose, he declares that the information upon which he predicates his charges in that remarkable performance is personal knowledge which he derived in the service of the government while making such investigations. In the course of the examination of Mr. Stanton, those of the committee who were present will remember that the inquiry was made of him whether, if, in the course of the investigations which were to be made by Mr. Conkling, it should come to his knowledge that there was corruption in the chief of the bureau or in the conduct of the bureau, it would have been his (Conkling's) duty to have brought that knowledge in some official manner to the notice of the Secretary of War. He said most unequivocally it would have been. He said that any information coming from a respectable source, predicated upon facts to warrant it, he should not only have received, but have acted upon. And, further, he took occasion to say of General Fry, that he would not have been retained in office an hour if any information of corrupt conduct, coming from a source to entitle it to consideration, had been brought to his knowledge. That is his construction of what the duty of Mr. Conkling was under these circumstances, and of the consequences to General Fry. Yet, Mr. Conkling makes the gravest and most solemn charges, involving the deepest degree of culpability upon the part of the chief of that bureau, in his speech upon the floor of the House, and states that he makes them from his personal information, and yet he never even intimated it to the Secretary of War. In his testimony, on pages 61 and 62, in response to an interrogatory of General Jeffries, he is made to say that, in a conversation with the Secretary of War, he in some way or other intimated to the Secretary that he could not avoid the impression that there was something wrong in the chief of the Provost Marshal General's bureau.

Assuming that he had in that conversation made some communication to the Secretary damaging to General Fry, he is asked in reference to it directly, and he declined to answer the question because, as was claimed, General Jeffries had made his question assume what was not true. The untruth was in assuming that he had made some communication damaging to the reputation of General Fry, and thus he denied here that he ever did make such a communication.

MR. CONKLING. You are mistaken about that; the record shows no such thing.

MR. RIDDLE. The record shows just that thing: I will read what it does say.

"Question. Did you ever at any time report to the Secretary of War any fraud, corruption, malfeasance, or neglect of duty, on the part of Provost Marshal General Fry?"

"Answer. I informed the Secretary of War that facts, transactions, and coincidences had come to my knowledge which rendered it impossible to resist the impression that there was something wrong at the head of the Provost Marshal's bureau."

I now read from page 67, in connexion with the subject:

"Question. What did you report to the Secretary of War against General Fry, and when was it?"

"Answer. I have had several conversations with the Secretary of War, in which I have mentioned to him my suppositions, and the circumstances which had come to my knowledge. The precise time of these conversations I should not be able without reflection to state.

"Question. What did you say to the Secretary of War in the conversation alluded to?"

"Objected to by Mr. Hotchkiss, on the ground that the evidence is incompetent, irrelevant, and improper.

"Question. What did you say to the Secretary of War when you reported

to him your suspicions of General Fry, and that there was something wrong at the head of the bureau? You will please notice that in this question I do not call on you for anything said by the Secretary of War.

"Answer. The question supposes what is not true, and therefore I cannot answer it directly."

Mr. CONKLING. You now see that you were quite wrong in your statement, do you not?

Mr. RIDDLE. And the committee sees that I was exactly right in my statement. There is, however, no point in it except to show that Mr. Conkling, in his speech in Congress, makes these charges upon his own personal information, and that when on the stand, under the cross-examination, he denies, substantially, that he ever gave this information to the Secretary of War, in whose employment he acquired it.

Mr. CONKLING. I wish to say that that statement is in defiance of the record. The question of time was the one in issue when I said the question supposed or assumed what was not true, and that I could not, therefore, answer it directly. I had no conversation with Mr. Stanton from April, 1865, until after the prosecution of Major Haddock; the question assumed a conversation during the prosecution of Major Haddock, which was not true.

Mr. RIDDLE. The point is simply this: Mr. Conkling declared on the floor of the House in a speech that he made these charges against General Fry from personal information obtained while in the service of the government. The Secretary of War is inquired of whether it would have been the duty of Mr. Conkling to have communicated such information, if within his knowledge, to him, and he said it would. It is then shown by the testimony of Mr. Conkling himself that he made no pretence of communicating any such information. If he did communicate this to the Secretary, as it is positive from Mr. Stanton's evidence that he did not, why did he not in his testimony say so, or why does he not say so here, instead of trying to insinuate now that he insinuated something then? Now, he either came into the possession of information showing that General Fry was guilty of malversation and corruption, or he did not. If he did not, then he was guilty of conduct not to be characterized properly by me in your presence, as a member of Congress, in declaring on the floor that he had such knowledge. If he did learn it under the commission with which he was intrusted, then he was guilty of gross neglect of duty in not communicating the facts to the head of the War Department. From this there is no escape.

I repeat, for I do not want to be misunderstood, Mr. Conkling declares solemnly at the close of that speech that he made his charges against General Fry on his personal knowledge, and that he derived that knowledge while in the service of the government in making these investigations. That he did not communicate that knowledge to the Secretary of War is true. If he had it, as he states, he should have declared it to the Secretary. If he did not have it, he should not have declared on the floor of the House that he did have it; and here I leave this matter.

I am obliged to omit some things I would like to comment upon, and pass to the grave matter of Mr. Conkling's two offices and double compensation, the only remaining matter in that letter to be discussed by me.

I am really in a condition to say nothing further, but I will give my views on this remaining subject. General Fry says:

"For his services in this connexion Mr. Conkling received, on the 9th of November last, from the United States, the modest fee of \$3,000."

And again:

"I suppose there can be no doubt among highminded men as to the character of Mr. Conkling's course in this matter. Whether his action in exercising the functions of judge advocate, and receiving pay therefor from the United States to the amount of \$3,000, while receiving his compensation as a member of Con-

gress, was a violation of the letter or spirit, or both, of article one, section two, of the Constitution, I leave others to decide."

There is the assertion in that paragraph that Mr. Conkling acted as a judge advocate; that he discharged the duties of that office; and that for that specific thing he received a compensation of \$3,000, and that for the same time he drew pay as a member of Congress. In reply to that, and also in part in reply to Mr. Ross, of Illinois, Mr. Conkling makes this remark in his speech of the 30th:

"I should be sorry to suppose that the member from Illinois, or any other member of this house—indeed, I should be sorry as an American to suppose that the standard of intelligence anywhere in the country is so low that any human being, unless it be that distinguished mathematician and warrior, Provost Marshal General Fry, believes that there is the slightest impropriety in a man who is a member of Congress practicing his profession as counsel in courts, or accepting from the government of the United States or from any other client a retainer for such professional services. It would be very extraordinary, indeed, if some distinguished gentlemen, whom I will not name, who have recently performed most conspicuous professional services for the government while they were members of Congress, had subjected themselves to the criticism of the gentleman from Illinois, or of anybody whatever, always excepting, of course, Provost Marshal General Fry."

Again, and this was also in reply to another query from that inquiring mind, Mr. Ross:

"I beg, Mr. Speaker, to assure the gentleman 'confidentially,' as the gentleman from Pennsylvania (Mr. Stevens) would say, and I hope he will regard it as a confidential communication, that I never did receive salary as judge advocate during the period he refers to or during any other period—not one penny. Indeed, Mr. Speaker, I found myself very unexpectedly elevated when I saw the announcement in some paper that this retainer which the government had given me made me acting judge advocate for the purpose of trying a case. It was merely an employment as counsel; and the counsel fee which was paid is, I beg to assure the gentleman, the only compensation that I ever received for my services. I never received any pay as judge advocate during any period whatever."

If these statements are worth anything they are that he received no appointment as judge advocate. The letter of Mr. Dana, giving the appointment or retainer, or whatever it may be called, of the 3d of April, was read to the House, and Mr. Conkling claimed that that was his sole authority. As bearing on this matter and in startling contrast to Mr. C.'s speech, I refer the committee to an extract from Special Order, War Department, No. 227, dated May 13, 1865, containing the order convening the court for the trial of Major Haddock, and in the detail for the court are these words: "*Hon. Roscoe Conkling is appointed judge advocate of the court.*" How does that sustain the assertion of the gentleman's speech?

Now, it was by virtue of that appointment, and by virtue of no other, that Mr. Conkling had any business to be with that court. The records of the court and the trial of Major Haddock have been spread out before you, containing over a hundred signatures running through it, of "Roscoe Conkling, Judge Advocate," sonorous, artistic, and official, every one of which is an exclamation against the assertions of that speech. It was by virtue of that appointment that he had the right to exercise any function in connexion with that tribunal. What is the theory set up by Mr. Conkling in reference to this matter? We have the argument of the Secretary of War, which is in substance, that, although Mr. Conkling was there by virtue of this general order—for there is no pretence that he was discharging the duties by virtue of the general commission he received, to make investigations—it was really no office. It is the same thing as if he, the Secretary, had ordered Mr. Conkling to shoulder his musket, go into the field

and fight a given battle. Now, among the many things that the necessities of the war have justified, no officer has gone to the extent of putting a musket into the hands of a man out of the military service and ordering him into the field. Whatever the duties of the Secretary of War may have been—and I will not like a member on the floor of Congress about April 30, “pause to thank” him personally, and on behalf of the people, for his great services—I think those duties have been well and faithfully discharged, but they were always discharged through the medium of some law, some usage, some regulation, or some rule, new or old. If there had been any law or rule by which the Secretary of War could have taken Mr. Conkling or any other person, and have placed a musket on his shoulder and sent him into the field, and he had done so, it would have invested him with the characteristics of a soldier; at least, he would be amenable to military discipline, and to that extent he would be stripped of his character of a citizen. If, therefore, there is any analogy between the case supposed by the Secretary and the case of Mr. Conkling, the gentleman is entitled to the benefit of it.

The Secretary of War could, undoubtedly, make a detail of anybody to do the duty of judge advocate, and that it was not an appointment, but simply a detail, is the argument. Well, gentlemen, with all deference to the opinion of that clear-headed and sagacious officer, I beg to suggest that no matter by what name the person discharging the duties of judge advocate may be called, by what instrument his duties may be defined, or what may be his assigned rank in the service, he can exercise these duties in no case without a special detail or a special appointment in each case. There never was an instance to the contrary. If the Judge Advocate General had gone on to Elmira, where this court-martial was held, without having his name mentioned in this special order detailing the court, he would have had no more business there than anybody else. Invariably, whether the officer is selected from the military department proper, or from the Bureau of Military Justice, under the general control of the Judge Advocate General, or whether he is a civilian, appointed for the time being, in either event, he is to be, by the same official action, clothed with certain power and endowed with certain attributes through which he may exercise certain duties. They are all conferred in the same way.

What are the duties? Are they merely those of counsel? What is he to do? He comes himself, to be clothed with a power by which he exercises new functions, partly ministerial and in some degree judicial. There is a wide difference between the advocate and the judge advocate. As counsel, he may appear and cross-examine witnesses, ask questions, and argue points of law, as other counsel may; but as judge advocate, he carries with him an original germ of authority, which enables him to clothe others with new qualities. Upon him alone depends the sanction of the oath which constitutes the officers so detailed a court-martial, through whom alone the oath taken by them can be made obligatory upon them. It emanates from the judge advocate, not because he is counsel, but because he is the officer to do that which nobody else can do, which no magistrate can do, which no civil judge can do, which no other officer empowered to administer oaths can do. Nobody except him can appear in that tribunal composed of gentlemen who are about to become a court and invest them with solemn organization, without which they cannot become a court-martial. Am I, then, to be told that although he fills the duties of such a position, he is not an officer? that although he is declared to be a judge advocate; although, as such, he administers the oath of office to the president of the court and his associates and receives from him the oath prescribed alone for a person invested with the office of judge advocate; although, because he is judge advocate, he issues a process which nobody is at liberty to disregard—am I to be told that a person invested with these powers and responsibilities is not an officer? You might as well say that the man put into the ranks under military law was not for the time a soldier.

How is it? Can a man authorized simply to make certain investigations in the western division of New York sit down and draw up a subpoena by virtue of which, when signed by him, whoever it may be directed to must obey it, from the highest to the lowest in the land—must forego all pursuits or engagements of business, must travel whatever distance, and come before this tribunal, and there render himself liable to the pains and penalties of perjury, because of the oath administered to him as a witness by this judge advocate—is that oath to give a judicial character to the testimony, and yet the man who administers it cannot be an officer?

Why, if the committee please, let me carry the duties still further. It is by virtue of the official character which he is authorized to assume that he is retained as the adviser of the court when everybody else is excluded. His official name is recorder, for the reason that it is one of his duties to make up the record, and there is no hand but his that can give it official sanction. He makes the final certificate; and it is because he can do these things; it is because he has done them, because he has done them properly, by virtue of ample and sufficient authority, that the proceedings and judgment of the court are entitled to any consideration in the world. It was because Mr. Conkling exercised that function that this man Haddock was legally tried and convicted and properly punished. If he was not judge advocate, then the whole proceedings of that tribunal were illegal, the trial a mockery, and the man sacrificed.

Now, to argue against the proposition that this man was an officer and performing the duties of an office, is, it seems to me, one of those laborious undertakings which, while it might provoke admiration, will not be very likely to secure conviction.

An "officer," says Webster, is "a person commissioned or authorized to perform any public duty." (Webster Unabridged, 769; title Officer.)

At this time, during this time, and from a period anterior to this time, Mr. Conkling was at least a member elect of the thirty-ninth Congress. I think, without overstraining the testimony as it has been already put in, not for the purpose of proving that fact, but incidentally, and for the purpose of proving certain other facts, it is made abundantly to appear that he had not only been elected to Congress, but by various acts declared his election to accept the office, inasmuch as by various *quasi* official acts he had entered upon the discharge of the duties of the office.

I know that distinctions are oftentimes made between members of Congress and members elect, and I do not desire to ignore that distinction. I know that, for certain purposes, it is held that a person elected a member of Congress does not become invested with the obligations resting upon him as such until after the House shall have been organized and he has taken the oath of office. It is, however, true that Mr. Conkling had before this time, in various ways, transacted various matters of business imposed upon him because he was a member of Congress. He had taken upon himself to perform various duties in his relations to the executive branch of the government because a member of Congress. There is no testimony showing, with anything like clearness, whether he did or did not, during this period, exercise the franking privilege; but the testimony is quite full in showing that he was in constant communication with the government from the time he was elected, as a member of Congress.

It cannot quite be said, though I think it is fairly inferable from the gentleman's speech in reply to the letter of General Fry, that he means to assert that the compensation he did receive was for labor entirely apart from that which he performed as judge advocate, for he indisputably declares that for his services as judge advocate he never received a cent. Now he did no duty on that court-martial, or in connexion with that trial, which he did not perform as judge advocate; he could have performed no other duties—he could have been there for no other purpose at all. If he was compensated for his services on

that trial, he was paid as judge advocate, and not as counsel for the government. The voucher for his pay has been put in evidence, and I desire to refer to it:

The United States (for the office of War Department.) to Roscoe Conkling, Dr- 1865. For legal services rendered in the case of Major J. A.

Haddock.....	\$3,000 00
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Approved.

Received, Washington, November 9, 1865, from John Potts, disbursing clerk for the War Department, three thousand dollars in full for the above account.

ROSCOE CONKLING.

Thus it is seen that he was paid \$3,000 for this trial, and not generally for professional services, as he asserts in his speech; and taken in connexion that he was appointed judge advocate, that the labor rendered was as judge advocate, and that the \$3,000 paid him was for that service, it is absolutely true in fact and law that he was paid as judge advocate, whatever he asserts to the contrary.

Upon the first day of the present session of Congress Mr. Conkling appeared, as he himself admits, and was sworn into office, and received compensation from the 4th of March preceding as a member of Congress, \$3,000 per year in addition to the \$3,000 he had received as judge advocate for a portion of the same time. The character of that transaction can nowhere so safely be judged of as by the American House of Representatives. Exactly what the nature of the transaction was, and exactly what the consequences which must follow it, if sanctioned by the House, can be seen and will be guarded against by that body. I do not know that I ought to be heard further upon it, or that any argument of my own could add any light to the subject.

The place of a representative of the American people in the Congress of the United States is, in my judgment, the most solemn and sacred office for which the Constitution in any way provides. It is unlike any other office in the mode of its appointment, in the duties it imposes, the obligations it implies, and the privileges which it confers. It is an office which emanates directly from the people themselves. There is no duty which the Constitution or law imposes upon a representative for the discharge of which he can in any way be made responsible to any other tribunal save to the people and the body of which he is a member. He is not appointed by the Executive; he is not elected by the State legislature. He holds no commission except simply the official certificate of his election.

Mr. WARNER. Is he an officer under the general government?

Mr. RIDDLE. If you speak of the general government in that large, broad sense, which embraces all the co-ordinate branches of it, he certainly is. My own views of the position and office of representative throw him outside the pale of the statutes which ordinarily prescribe the duties and obligations of men in office; and yet, that he does not fall within the purview of the statute so far as the receiving of compensation for other offices is concerned, I am not prepared to say. One thing is undeniable—that the admission of the right of a member to hold office under the executive branch of the government is an admission involving more or less danger to the perfect independence which should characterize a representative of the people. He is responsible alone to the people who create him, and it is perfectly plain that he should be entirely free from any influence, or from any supposed influence, that can be brought to bear upon him by the Executive. The experiment of this American government has proved the truth of the old maxim that power is aggressive; that the executive department, by the exercise of the inherent vigor of the office itself when in the hands

of vigorous men, has managed to take to itself, and call to itself directly and indirectly, a vast amount of power and patronage which certainly were not within the intention of the original framers of the government. The representative comes here simply as a representative. As a representative all the places of the executive department are open to his inspection. No insignia accompanies him. He wears no mark of distinction, and no herald precedes him, but in his presence President and People stand uncovered in simple reverence of the sacred character of the offices he performs. His is the sole voice through which a hundred and thirty thousand Americans may make known their wants, prefer their prayers, and make their complaints. The territory and all unspeaking things, with their great unvoiced interests, find their utterances through him alone, and he must, from the very nature of his functions, from the theory of free representative government, in order that he may represent, and for all these speak truly, be free from every possible approach of executive influence, and the House must affirm and declare this freedom.

The present compensation of members of Congress is by a salary of so much for the whole year, upon the theory that the people may require his entire time to the exclusion of all other possible employments.

I am now speaking of the representative character outside of any provision of Constitution or statute. Suppose it is conceded that a member of Congress, at any time after his election, while he is a member elect, and before he receives fully the character of a member, or in a vacation, may legally accept appointments from the Executive; may receive employment from him; may render him important services, and receive, as compensation, money or reward in any form; am I to stand here in the presence of this grave organ of this great American House of Representatives to inquire whether that can be consistent with the purity and integrity of an American representative? I will not undertake to say to the distinguished gentlemen in whose presence I speak, that because at some time a representative may have rendered valuable services, and may have received money as compensation for them, that it is to be flung in his face that he has thereby become an unsafe depositary of the obligations imposed upon him by his constituents; but I do undertake to say, and I say it with the clearest convictions of an American citizen, which rises above the mere advocate, that there is grave peril in it; that it is a practice which should not receive the sanction of the House of Representatives. I do say that, although there may be instances in which such a thing may even properly be done; but if the practice be sanctioned by a solemn act of the House of Representatives, that a member of Congress may at any time after his election lay himself open to purchase by the Executive, having access to the President because he is a representative; having access to the various heads of departments because he is a representative and a friend of the administration; that he may be permitted to take advantage of his position to solicit or receive office or employment for himself—I say there is in that most imminent danger. I do not say that there is anything of actual corruption in this case; but I say that, if sustained by you, the practice leads to nothing but evil. When, for instance, parties are nearly balanced in the House, would it tend to the purity or independence of the representative for the Executive to have it within his discretion to confer office or position upon a portion of those representatives, giving them a money consideration for their services; or if there were a dozen gentlemen on the floor who had already rendered important services, and had received compensation therefor, is it too much to say, does our knowledge of human nature warrant us in saying, that there is not danger that the votes of those men might in some degree be influenced by the Executive favors they have received or might hope for?

I am not now asking whether Mr. Conkling rendered greater service to the government than the money compensation received by him would purchase, o

whether the obligation is not on the part of the government towards him. The only question is, whether the department has come between the representative and the represented? Has there been a duty imposed upon him such as would tend to render him less serviceable to his constituency, and less disinterested between them and all others? What were the duties so imposed upon him by his new office? They were military duties, for the time being. He was amenable to military law. He was subordinate to the War Department. His immediate chief was the Judge Advocate General. Suppose there had been a sudden summons to convene the Congress of the United States, what power could grant him leave of absence to attend the sittings of the House? It comes from the Executive. And if he may be away, doing the duties of judge advocate, another may be off, commanding a regiment, a brigade, or a corps, indeed, the whole House might be off on the business of the Executive. It seems to me apparent, that the obligations and duties imposed by such an office are utterly inconsistent with the duties of a member of Congress, during the term of service for which he is elected, whether he receive any money compensation for it or not.

I have thus glanced at the character, position, and duties of an American representative, as they exist outside of constitutions and statutes.

Let us now see what are the provisions of the Constitution and of the laws bearing upon this subject. The provision of the Constitution is not, in its exact language, broad enough, perhaps, to cover this case, but the principle it embodies is. The second clause of section 6, article 1, says: "No senator or representative shall, during *the time for which he was elected*, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office."

It is a pity that the language of this clause had not been made commensurate with the great principle it so awkwardly enunciates, and so clumsily and haltingly applies. The mischief could then have had no existence.

I commend the remarks of Judge Story on this clause, commencing on page —, volume first, of his work on the Constitution, to the consideration of the committee. You may find that Judge Story, with his usual felicity, gives you copiously what may be said on all sides of this grave matter, without indicating his own conclusions. He was a judge, and, as author, decided nothing.

It has been supposed, also, that there are two or three sections of the statutes within the purview of which this case falls. In discussing the nature of the representative's office, I have intimated my own individual opinion that these statutory provisions may not, in one view, cover the cases of members of Congress. But I do not intend to admit away the force of the argument that would bring them within these statutes. They are most clearly within the language of one of them.

The statute of August, 1852, (Brightly, 820, section 40,) provides that "no officer in any branch of the public service, or any other person whose salary, pay, or emolument is, or are, fixed by law or regulation, shall receive any additional pay, extra allowance, or compensation in any form whatever, for the disbursement of public money, or any other service, or duty whatsoever," &c.

See also Brightly, 521, section 46, same statute, which says that "no person who holds or shall hold any office under the government of the United States, whose salary or annual compensation shall amount to the sum of twenty-five hundred dollars, shall receive compensation for discharging the duties of any other office." If a member of Congress holds an office under the government of the United States, and if Mr. Conkling was at the time a member of Congress, his case would seem to fall under this last section.

It may be said, however, that even if the language of this statute is broad enough

to cover the case of a member of Congress, it cannot cover Mr. Conkling's case, because at the time he was performing these duties and receiving this compensation he had not been sworn in as a representative in Congress, and that he was not, therefore, a member of Congress, and as such an officer.

This question of the status of a member elect, and his relations and privileges and capacity to hold other offices, has been fully considered in many of its aspects, as they have been presented in the House of Representatives and settled. And I avail myself of the exhaustive report of Mr. Dawes, from the Committee of Elections, June 13, 1864, (Report 110, 38th Congress, 1st session,) made in the cases of the military appointment of F. P. Blair, and which disposed also of the case of General Schenck. This very able report contains references to nearly every adjudicated American case bearing upon the subject, with illustrations drawn from the practice of the British Parliament, and the adjudications of our own and the English courts, condensed into the compass of ten pages, and I earnestly commend every word of this document to your careful consideration.

The results arrived at by this report are, that the usage and action of the House of Representatives, in the consideration and decision of the cases that have arisen in it, clearly inscribe, as the American text, these rules :

That a member elect is not a member of Congress proper until, at or after the organization of the House, he appears and is sworn.

That he is not bound to elect whether he will become a member of Congress until the day for the organization of the House.

That during the interim he may accept another office, and that his so accepting another office is not in itself an election to not accept the office of a member of Congress ; but if he should continue to hold that other office until after the day of the organization of the House, the so holding would be an election not to accept of the office of member of Congress.

That if a member elect accept another office, he must vacate it before he can elect and become a member proper.

That if a member of Congress under the above definition accept another office, he thereby vacates his seat.

The case of Van Ness, in the 7th Congress ; of Herrick, in the 15th ; of Yell, in the 29th, and of Baker in the same ; that of Vandever, in the 37th, and the cases of Blair and Schenck, in the 38th, seem fully to sustain these conclusions.

If these conclusions are accepted by you, gentlemen, as indicating a rule for the disposition of Mr. Conkling's case, as made against him by General Fry, you would be authorized in holding that he might have accepted the appointment as judge advocate and receive compensation for it ; and as the office had expired prior to the day of the organization of the House at the commencement of its present session, he could appear, receive the oath, and become a member of Congress, as he did, but that he could not as a member receive compensation from the 4th of March, but that the date from which his salary as member of Congress must begin was the day succeeding the last day on which he performed any duty as judge advocate, and that he must refund for all the time prior to that day.

Among all the instances that have arisen, and to which the attention of the House has been called, where members had received two compensations, they have refunded the one as member of Congress. I remember the case of General Blair, General Smith, and one or two others.

I here, gentlemen, your kindness having permitted me to conduct these labors to this point, gladly conclude them. The interests and reputation of a fellow-member must be safe in your hands ; and if a blow falls in that direction, it will be with averted faces. The privileges of Congress, the rights and immunities of the people, you will sacredly protect. And sure I am that the honor of a gallant officer, and the reputation of a meritorious public servant, whose duties have been performed in a hitherto unknown field, amid difficulties and embarrassments the most trying, may be safely committed to your keeping

A R G U M E N T
OF
H O N. R O S C O E C O N K L I N G,

JUNE 26, 1866,

Before a Special Committee of the House of Representatives, raised to investigate the administration of the Bureau of the Provost Marshal General, and also the act of James B. Fry, the head of the said bureau, in sending to the House a letter libelling the character of one of its members, and also the truth of said letter.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: Before proceeding to the argument itself, I wish to remind you of the circumstances out of which this investigation grew. On the 24th of April the House of Representatives had under consideration the "Army bill." The Military Committee had been induced to adopt a section rendering the office and bureau of the Provost Marshal General perpetual—transforming it from a temporary invention of the war into a permanent element of the peace establishment. A motion was made by me to strike out this section, and my reasons for the motion were given in the House at the time. In assigning these reasons I reviewed the public administration of an executive officer, and the management of the bureau of which he was the head.

As a part of my remarks, I caused to be read a letter from the Lieutenant General of the army, which letter had been addressed and sent to a member of the Military Committee of the Senate, and had been used as evidence and information against the proposition to continue by legislation the office of Provost Marshal General. This letter was called out by a communication addressed to the Lieutenant General by a member of the Senate committee, and had been sent to me to be used in debate in the House of Representatives.

In reply to the motion made by me, and to the remarks submitted in support of that motion, and to the letter in question, a member of the House, Mr. Blaine, made a personal attack on me. He charged that the letter of the Lieutenant General had been improperly brought into the House by me. The term he used was, "smuggled in," and, having uttered this imputation, he proceeded further to arraign my motives. He charged that I had had "quarrels" with General Fry; he charged that in these "quarrels" I "came out second best at the War Department." He charged that I had traduced General Fry, and had done so in his absence, and in a place where he could not be heard. In a subsequent portion of his remarks he said that he understood there were "personal difficulties" between myself and General Fry; and, speaking of General Fry, he used the following words: "And he is ready to meet the gentleman from New York, and all other accusers, anywhere and everywhere."

In answer to these personal and offensive remarks, I pronounced them false, and, denying all intention to confine the statement of my opinion and knowledge of General Fry's administration to a place where General Fry could not be heard, I stated that I was ready to make my statements good wherever the question of their correctness might be raised. The House, by an almost unanimous vote, sustained the motion to discard the office of Provost Marshal General.

I may here remind the committee that to pronounce "false" a statement, or even the report of a committee, is the right of a member of a parliamentary body, and in doing so, he does not transgress the limits established by parliamentary practice, the distinction being between imputing an intentional falsehood to another, and pronouncing false a statement itself. This distinction is especially palpable in a case where the statement made is of such a nature as to show upon its face that it does not originate with the member who utters it, but depends for its truth upon the statement given him by some third person.

On the 30th of April, six days after the proceedings referred to, General Fry sent, and Mr. Blaine brought into the House and caused to be read, a lengthy letter, accompanied by various exhibits and documents formally certified. This letter contains an elaborate and studied libel, or rather a long series of libels, upon my private character, the undisguised purpose being to inflict injury upon me in retaliation for words spoken in debate.

The House, in vindication of its own honor, ordered, at my suggestion, an investigation, not only of the administration of the Provost Marshal General and his bureau, but also of the act of sending the letter in question, and of the contents of that letter. The committee in entering upon its duties resolved that before proceeding to investigate the official conduct of General Fry at large, they would first of all investigate his act in sending a libel into the House of Representatives in revenge upon a member for words spoken and votes given in the House. This inquiry involved the truth of that libel, and the motives with which it was written and sent. In one sense such an inquiry may be deemed personal, and in so far it is narrow and unimportant, but in the true sense, the inquiry is broad and important, and not confined to the interest of any individual.

The right to speak freely in debate and to vote without interference, while it is the right of the representative, is still more the right of every constituency. It is the great right of the people, and as such has ever been cherished in every system of free government. In England it has been maintained for centuries as the supreme prerogative and privilege of the public. And our fathers, in laying the foundations of government, jealously preserved in the spirit and letter of the institutions they formed, the same absolute exemption. Since the Constitution was adopted nearly a century has elapsed, and never until now has so audacious and offensive an attempt been made to strike a senator or representative in his private character in revenge for acts done officially. It is submitted that a more enormous breach of privilege can scarcely be conceived of. A man who out of the House commits a bodily assault upon a member is held guilty of a high offence. A man who should go into the presence of the House and during its session should commit an act of personal violence upon a member, would be held to have defiled all the sanctities of the place, trampled upon the rights of the body, and struck at the very principle of its existence; and yet will any one affirm, looking to the private or the public wrong attempted, that a bodily injury of such a kind is greater in criminality or extent than the act of a man who sends into the House, to be read in its face, and published to the world, a reeking malignant attack upon the personal character and official reputation of one or more of its members?

The assailant in this case is a military officer, a man bound by official obligations and invested with official advantages. He is bound by an oath of office to support the government in all its branches, and to maintain the Constitution. On the other hand, he has opportunities insured to him, which are denied to citizens at large, of vindicating himself from injustice or misconstruction as to his official acts. If wrong was done him in the criticisms made upon his administration, it was his privilege to demand a court of inquiry, or to invite a court-martial, and thus to create for himself a tribunal composed of men of his own profession, and certain to be, at least, impartial towards him. It was his right

also to ask a congressional investigation. Either of these courses would have vindicated General Fry, if, in truth, he had been innocent. Indeed either of them would have secured his acquittal had there been a reasonable doubt of his guilt; but in place of resorting to any proper and lawful means of vindication or defence, he chose to obtain or accept the connivance of a member of the House, and through him to make a foul attack upon the character of another member whom he held responsible, in part at least, for the rejection of his bureau, and for the debate which occurred at the time. There can be no pretence that the letter in question was designed as a plea in self-defence. The only allusions made to any matters tending to the vindication of General Fry are incidental and subordinate, its whole aim and purpose being to blacken the character of the person assailed and to spread its imputation beyond the reach of counter action. All this would be true even if the statements of General Fry were founded in fact, or if they had been by him believed to be true. But the case is aggravated by reason of the wantonness, the bad faith, and the malevolence by which the writer was prompted. Six weeks have been spent by General Fry in an effort to hunt up or invent something from which the committee might infer that he believed what he said; but despite all these endeavors the fact is palpable as to every substantial statement of his letter that he neither believed nor suspected it to be true, but knew it to be false when he made it.

I shall endeavor to show by the evidence, with equal certainty, that the motive of General Fry was base and malicious beyond the baseness and malice which ordinarily prompt the utterance of injurious falsehoods, and, therefore, for the purposes of this argument, I assume the position and undertake the task of showing affirmatively, item by item, the untruthfulness and malice of General Fry. I have preferred not to leave the matter in any of its parts to stand upon the mere absence of evidence to uphold it. I have preferred not to avail myself of any presumptions which the law raises against unproved slanders, and I have availed myself of the broadest permission the committee would give, to introduce affirmative evidence. This permission has been a narrow one. The committee ruled that upon this branch of the investigation, no evidence would be received except that bearing directly upon the motive with which the letter was written, or upon the truth or falsity of the statements in the letter bearing directly upon me. Notwithstanding the taut rein thus held, enough evidence has been received to show General Fry guilty not only of falsehood and dishonor as a man; guilty not only of the most cowardly slander; guilty not only of violating his official oath; guilty not only of breaking the rules, violating the regulations, and trampling upon the most cherished virtue of his profession, but guilty also of such official malfeasance as closes the door of charity and credulity against all extenuation.

In order to determine how far I have warrant for these allegations, I proceed now to review and examine the evidence. Let us begin with the first substantial statement made by General Fry. He says: "I am enabled to say that your assertions touching Mr. Conkling's difficulties with this bureau are amply and completely justified by the facts which this letter will disclose."

These words contain an imputation of falsehood, as do other subsequent words in the letter relating to the same subject. I shall not forget to recur to them again, and show the committee their effrontery and groundlessness. But for convenience I will pass them now, and consider them with the subsequent parts of the letter with which they belong. The next passage in the letter is this:

"My official intercourse with representatives in Congress during the past three years has been constant, and in many cases intimate, and, with the solitary exception of Mr. Conkling, it has been marked, so far as I remember, by mutual honor and fair dealing. Mr. Conkling being thus an exception, it is my

purpose to give a brief summary of his connexion and intercourse with this bureau "

I offered to prove by different members of Congress the total falsehood of this statement. I offered to show that the intercourse of General Fry with other representatives in Congress had been unfair and dishonorable, his conduct insolent, and his language profane, and that he had been denounced to himself as a dishonored man. This the committee excluded because it overthrew that part of the statement which had no reference to me. But beside this portion of it, there is a distinct suggestion that there has been dishonorable and unfair dealing on my part with General Fry ; and availing myself of the opportunity, evidence has been given to show that, in all the intercourse between the Provost Marshal bureau and myself, nothing has occurred to justify or extenuate this statement. On the other hand, General Fry has offered no evidence tending in any way to explain or excuse the imputation, much less to prove it, and leaving the committee to pronounce upon it, I pass to other matters.

The next allegation of General Fry is in these words :

"In the summer of 1863 Mr. Conkling made a case for himself by telegraphing to the War Department that the provost marshal of his district required *legal advice*, which he was thereupon empowered to give."

This stands as the first specification in the charge of unfair dealing with the Provost Marshal General. The circumstance to which reference is made has been detailed to the committee by Judge Hunt and other witnesses. These facts disprove the allegation ; but if that were all, room would be left to suppose that General Fry made his statement under some misapprehension.

The attention of the committee is, therefore, invited to the question, whether there can have been an honest mistake on this subject. Unless General Fry had something upon which he relied in making his statement, his assertion was certainly dishonorable. If he had no knowledge or information one way or another, he would be wholly indefensible, however the truth might be. It is material, therefore, to inquire whether he had ever heard or seen any statement to bear out his accusation. He offers no proof of any. He omits and refuses himself to testify to any ; and the proof before the committee demonstrates that he had full knowledge of the truth, and that he purposely misstated it. Indeed, this passage is one of the most frigid, premeditated falsehoods in a column of wilful misstatements. The occurrence referred to was somewhat old and far-fetched. It had evidently been hunted up. It was hunted up, perhaps, as long ago as the commencement of the session, when a resolution was offered by me inquiring into the necessity of prolonging the Provost Marshal's bureau. Mr. Stanton, it will be remembered, said that General Fry asked him a long time ago whether he had any objection to his making a defence of himself ; and the age of the circumstance in question, and its remoteness from anything brought in question in the House with regard to General Fry, raises a strong presumption that it had been looked up with malice aforethought. The mode of stating it also shows that the despatches had been referred to. The time is given as the summer of 1863. It is stated that the communication was by telegraph, and various ear-marks show that the telegram was within the knowledge of the writer at the date of the letter. Yet that telegram, proved as it is to be literally true in all its statements, shows a reckless violation of truth by General Fry. It shows that I did not "make a case for myself," and it shows that I did not telegraph that the provost marshal, or any other person, needed "legal advice ;" but simply that I communicated facts of an important nature, and recommended that the officers of the government should be directed from Washington as to the action they should take.

The evidence discloses that the representative of the district at the time, Mr. Kernan, could not be called on to confer with the authorities at Washington, as he was the counsel conducting the proceedings against the government officers

who had arrested and held the alleged deserter; that the officers had in vain sought instruction and advice; that an attachment was in the hands of the sheriff to compel the provost marshal to produce his prisoner, which he refused to do; and that the time, the occasion, and the circumstances were such as to disturb the community with the fear of forcible collision between the State and national authorities.

Having been the representative of the district, I was asked to communicate the facts to the government at Washington, and I did so by a communication prepared in the presence of many persons. This was my whole action in the matter.

The facts were well known to General Fry at the time. This clearly appears, because the answer to my communication has been produced, and is from General Fry himself, and we find him afterwards writing a letter about the same matter, and making requests in regard to it.

Yet, in defiance of all the facts, this obvious and blameless occurrence is trumped up, and an infamous insinuation put forth in regard to it.

The comment which this part of the letter of General Fry deserves is left to the committee.

I ask you now to consider the next passage, which is as follows:

"In April, 1865, Mr. Charles A. Dana, then Assistant Secretary of War, without notifying me, had Mr. Conkling appointed to investigate all frauds in enlistments in western New York, with the stipulation that he should be commissioned judge advocate for the prosecution of any cases brought to trial, and he was so appointed to prosecute before a general court-martial Major J. A. Haddock. Mr. Dana vested him, by several orders issued in the name of the Secretary of War, without the sanction of Mr. Stanton, with the most extraordinary powers."

I propose to examine this piecemeal. First. "*Without notifying me.*" These words, bursting with self-importance, are also full of untruth. The transaction to which they refer took place, as the papers show, on Monday, April 3, 1865, and the proof is conclusive that on the same day, and early in the day, and as soon as the matter occurred, it was fully communicated to General Fry. The subject was first broached the day previous, April 2. On that day the Secretary of War proposed the matter, and it was discussed and held under consideration, and even this, on the same day that it occurred and before any conclusion had been reached, was communicated to General Fry, and was known to him from his own observation also. Mr. Stanton and Mr. Dana both prove this positively. Who denies it? Does General Fry dare testify that he had forgotten it when he asserted to the contrary?

One of the counsel, while in actual consultation with his client during Mr. Dana's examination, put leading questions to show that the papers relating to Haddock and his alleged crimes, were sent for on the 2d of April to be submitted to me, and that General Fry was sent for in person also, and came in and saw the papers actually undergoing examination. They seemed to forget that, while thus pursuing some other point in the case, they were uncovering the fact that General Fry knew and remembered the very thing which in his letter he denies.

In this same examination of Mr. Dana it appeared that General Fry was expressly informed on the 2d of April, both by Mr. Dana and myself, that I was in Washington at the request of the Secretary of War, and that the subject of my visit was the alleged wrongs in recruiting in Haddock's division. The allegation under consideration, then, was certainly and intentionally false.

Let us look at the next step.

Second. "*Mr. Dana had Mr. Conkling appointed to investigate all frauds in enlistment in western New York.*"

Did General Fry believe this statement when he wrote it? In a subsequent

part of the letter he speaks of Mr. Dana as "his (my) friend Mr. Dana," and the imputation is that my employment was not the act of the Secretary of War, but was brought about by management and cuddling between Mr. Dana and myself.

If General Fry believed anything of this sort, he derived the impression somewhere and somehow. He saw something or heard something or other which led him to think so. What was it? Does any such crumb of evidence come to us on which charity can feed? He dare not testify that he had any reason to believe it, or that he did believe it. He did not believe it; had he done so even without evidence, but from sheer blind malignity, he would have spoken of it at some time to Mr. Stanton and been undeceived.

Let us go a little further:

Third. "With the stipulation that he should be *commissioned* judge advocate for the prosecution of any cases brought to trial, and he was *so appointed*," &c.

How came this statement to be made? It was not inadvertent, because upon it he founds a charge of very grave character. It is false, however. There is no evidence of its truth, but evidence of record to the contrary, which must have been familiar, and which is shown to have been familiar to General Fry. It looks like a studied statement for a carefully considered purpose, and it cannot have been innocently made.

But again:

Fourth. "*Mr. Dana vested him by several orders issued in the name of the Secretary of War, without the sanction of Mr. Stanton, with the most extraordinary powers.*"

Here are three printed lines, and four separate untruths.

1. It cannot be that General Fry believed that *Mr. Dana* did what was done at all. He was informed and knew to the contrary, as has been already shown.

2. "In the name of the Secretary of War." This is disproved by the papers themselves.

3. "Without the sanction of Mr. Stanton." We have the oath of Mr. Stanton and of Mr. Dana to the falsity of this. But let us suppose for a moment that it had been true, in order to test the integrity of General Fry. If it had been true, no one could have known it in the first place but Mr. Stanton and Mr. Dana, and any disclosure of it must have come from one of them. Indeed, the nature of General Fry's statement implies, and his language implies, that he speaks by authority of the Secretary of War. At all events, if General Fry made his statement in good faith, he must have supposed that Mr. Stanton or Mr. Dana had said something to warrant it. Both these gentlemen have been on the stand as witnesses, with full opportunity to General Fry and his counsel to cross-examine them. Did they venture to put any question going to show that it was pretended that either of them had ever hinted anything giving color to such an idea? It must not be forgotten here that all three of the papers referred to expressly state that they were made and given not only with the "sanction," but by the direct warrant, of the Secretary of War.

It must be remembered also that General Fry was pointedly informed, both before and after the papers were made, that the whole thing was the personal act of Secretary Stanton himself.

Yet in the face of all this, General Fry charges Mr. Dana with an official act not only surreptitious and dishonest, but amounting virtually to forgery.

Is this a malignant man? All unprincipled and untruthful men are not malignant. This inquiry is made of the committee at this point, because at another point it will be necessary to inquire whether General Fry is capable of waylaying the character or person of another; whether he is capable of suborning witnesses, or of seeking false evidence to stab the reputation of an enemy.

Look at the remaining statement in the three lines I am considering:

4. "With the most extraordinary powers." Mr. Dana and Mr. Stanton both prove that so far from this being true, the papers were ordinary *routine* papers, and conferred less than the powers commonly granted in similar cases familiar to General Fry.

Thus we see that the last quoted portion of the letter is knowingly false, not in some particular, but in every particular.

Please look at the next sentence and see whether it contains one single truth, or one innocent mistake. I quote: "Among these (the extraordinary powers) was the right to examine *the despatches in all telegraph offices* in the western division of New York, *which enabled a violation of the sanctity of personal and business correspondence.*"

Here is a distinct assertion—*first*, that all despatches, or the despatches generally, in the various telegraph offices, were, by the terms of the authority, exposed to examination; and, *second*, that the sanctity of personal and business correspondence was in fact violated.

The first assertion is sufficiently refuted by the written authority itself. As will be seen, it is a request merely, and asks that access be afforded to such despatches as will lead to the detection of frauds, &c. Here it is in full:

WAR DEPARTMENT,

Washington City, April 3, 1865.

Honorable Roscoe Conkling having been appointed by the Secretary of War to investigate transactions connected with recruiting in the western division of New York, all telegraph companies and operators are respectfully requested to afford him access to any despatches which he may require for the purpose of detecting frauds and bringing criminals to trial.

By order of the Secretary of War:

C. A. DANA,

Assistant Secretary of War.

But the matter in this part of General Fry's statement which needs attention most, is the infamous suggestion that, under color of the authority given me, I looked into private and business correspondence.

Even if the authority were broad enough to admit of such abuse, what palliation is there for the assertion that it ever occurred?

Does General Fry dare to present himself as a witness and testify that he ever heard or dreamed anything of the kind? On the contrary, he has been called upon repeatedly, in the presence of the committee, to come forward as a witness and purge himself. He has been notified, as the record shows, that it was charged and believed that he dare not submit himself to cross-examination; and yet he has refused, and has even submitted to the degradation of hearing his counsel announce, to go down on the record, that he declined to be cross-examined, and that if I obliged him to testify, or if the committee obliged him to testify, it must be as my own witness, and with the understanding that I should not be at liberty to impeach or contradict him!

I ask you, gentlemen, to contemplate the spectacle of a soldier and an officer publishing under his own signature charges of such a character, and then, when called upon to prove them or excuse them, being able to offer no legitimate evidence, and when required to testify to his own good faith in stating what he did, refusing to do so, and taking the ground, in so many words, that he will only testify upon compulsion, and then with the understanding that he shall not be impeached or contradicted!

Does not such a soldier stain the honor of his profession? Should he administer a bureau, should he remain an officer of the American army, or should he "sleep in honor's truckle-bed?"

Look, if you please, at the next sentence of this libel:

"For his services in this connexion Mr. Conkling received, on the 9th of November last, from the United States the *modest* fee of \$3,000."

The essence of this statement is that the sum paid was excessive, and there is a suggestion running through the whole that the employment was improperly sought after, improperly obtained, and improperly charged for.

General Fry surely knew all these things to be untrue. Let us see if he did not.

He knew that the employment was not sought after. A letter has been put in evidence, written by me to General Fry, and brought here from his files, dated April 24, 1865, expressive of reluctance to go on with the service, and of a wish that I might be relieved. Mr. Stanton and Mr. Dana both testify that the employment was declined; that I named another lawyer and advised his selection, and consented to act only upon Mr. Stanton's urgent request. (See testimony of Mr. Stanton and Mr. Dana.) Besides, the record of Haddock's conviction, which General Fry is shown to have examined long ago, disclosed facts showing that the employment was not sought or obtained by any act of mine.

General Fry knew, also—for the same files of the department from which he learned that compensation had been made disclosed the fact—that the fee was not fixed by me, and that no charge whatever was ever made. He knew further that Mr. Stanton fixed the compensation, and he knew the general extent of the services, and the amount of money obtained by the government. This amount was not less than two hundred thousand dollars, besides the fine of ten thousand. (See the review of Judge Advocate General Holt, which is in evidence.)

Can it be supposed that General Fry believed that Mr. Stanton had fixed and paid an improper or excessive fee? If he knew the value of the services, or if he inquired of others who did know, he cannot have supposed the compensation was too much; and if he did not know and did not inquire, he cannot have believed that Mr. Stanton had acted in ignorance or bad faith.

As to the reasonableness of the allowance, General Fry has offered no evidence, but the committee has heard the testimony of several witnesses well qualified to speak. Judge Hunt says \$5,000 would have been reasonable and just. This witness has a minute knowledge, as his examination proved, of all the particulars necessary to form a judgment of the value of the services, and his evidence shows, as does that of Mr. Roberts, an actual pecuniary loss sustained from the neglect and surrender of other professional business greater than the fee in question. Mr. Stanton swears to his opinion, and says that he thought at the time the allowance should have been \$5,000 instead of \$3,000.

Mr. Dana, who well knows what other persons received for professional services rendered the War Department, says \$5,000 or \$6,000 would have been moderate.

That we need not lack light on this subject, the committee called before it the head of the American bar, if any man is accorded that distinction. I was not present, but the record shows that in answer to the chairman of the committee, the Honorable Reverdy Johnson said \$5,000 would have been a moderate charge for the service. And it was admitted by the counsel before the committee that such would be the testimony of other eminent lawyers.

The reasonableness of the fee paid is thoroughly established; the propriety, in fact, of its payment and receipt, cannot be questioned, and is not now questioned; and the committee will be able to say whether the *animus* of the pretence to the contrary could have been honest.

That the request to render the service was proper *in law*, that the rendition of the service was proper, and that it was right by law, technically, in form and substance, to make compensation on the one side and to receive it on the other, I shall endeavor to satisfy the committee in the proper place; but as that is a question of law, I will speak of it separately.

Let me first continue the examination of General Fry's statements of fact. He proceeds to say: "Whether he received, as has been reported, from his district \$5,000 more for the same service, and whether he received additional fees from guilty parties for opposing proceedings at Utica, I am unable now to say."

The first statement here is under cover of an alleged rumor, and is in the form of insinuation. It would therefore have been competent for General Fry to prove anything verbal or written, by way of hearsay, or scandal even, that had reached him, and to which he had reference at the time he wrote his letter.

A member of the committee put to Mr. Roberts the question whether he had ever heard such a report. General Fry certainly knew, therefore, that that kind of evidence was available if he had it, yet no attempt has been made to prove that any human being ever whispered or hinted such a thing. If General Fry ever heard or heard of such a report, he was a competent witness, *the* witness of all others to state it, yet he recoils from the witness stand as he would from the sting of an adder.

The committee will see that such a report as is suggested never could have prevailed, for malice would never invent so preposterous and bungling a statement. Why? Because my district consists of one county—counties in New York are represented for such purposes only by boards of supervisors—and the statutes of the State require accounts of moneys to be so kept and so published that no sum could have been paid for such an object by any custodian of public money without the records showing it to the world. The proposition is upon its face impossible and absurd.

The second branch of this atrocious accusation is not pretended to be founded on rumor—it is stated as a belief generated in the mind of the writer by something he knows. He then states, in substance, that he can mention something tending to account for his belief, and straightway he proceeds to yet another deliberate untruth, which, as we shall see in a moment, was intentional.

But, first of all, what will the committee say of a man capable of making such a charge without an atom of evidence to substantiate it, or to explain his making it?

The next words in this letter are these: "But, as hereafter shown, he was as zealous in preventing prosecutions at Utica as he was in making them at Elmira; and the main ground of difficulty between Mr. Conkling and myself has been that I wanted exposure at both places, while he wanted concealment at one. I suppose there can be no doubt among high-minded men as to the character of Mr. Conkling's course in this matter." An effort has been made to change this assertion from a bald and naked falsehood, into a reference to something that General Fry believed had occurred in relation to the following persons: Captain J. P. Richardson, provost marshal, dismissed December, 1864; Captain P. B. Crandall, provost marshal, suspended March 13, 1865; discharged May 31, 1865, Aaron Richardson, of Albany, the accomplice of Had-dock.

The attempted explanation only aggravates the crime of making the charge, because the explanation is in bad faith in each instance. Let us see.

The effort to conjure up anything of the kind in the case of J. P. Richardson was a fraud upon the committee, and a wretched subterfuge. There could be no possible room for General Fry to suppose that I wanted concealment as to Captain Richardson, or that I had prevented any prosecution against him. He knew to the contrary. In the first place, the only part I took as to the removal of Captain Richardson was to advise and ask for publicity and investigation, that we might know what, if any, wrongs had been done. My action was all in connexion with that of numerous leading citizens, and no malice could honestly torture it into impropriety.

This appears from letters brought from the files of the War Department, from the following citizens of Utica: Hon. William J. Bacon, Hon. Ward Hunt,

Ellis H. Roberts, esq., T. R. Walker, esq., Erastus Clark, esq., Charles H. Hopkins, esq., and others. These men are neither "drunkards," "cowards," "thieves," nor "sneaks," nor are they "demoralized" or "dishonest," as Mr. Dana testifies General Fry said all the people in Oneida county were, and their letters as to Captain Richardson, concurred in by me, demanding investigation, tell too plain a tale to leave any escape from the conclusion that the pretence is dishonest that General Fry supposed concealment was sought in the case of Captain Richardson.

But, again, in December, 1864, more than three months before I was requested to prosecute Haddock, or to make any investigation for the government, General Fry wrote to me (see the letter) that the charges against Captain Richardson had been placed in the hands of William A. Dart, United States district attorney, at Pottsdam, New York, upwards of two hundred miles from my residence. He knew, therefore, that in April, 1865, Captain Richardson was not and had not for months been connected with the Provost Marshal's bureau, or with the military service, and that his case had been specially handed over to the civil tribunals, and placed in the hands of the regular prosecuting officer there. Yet, in the face of all this, General Fry has the hardihood to pretend that he meant in his letter merely to say that I ought to have prosecuted Captain Richardson, and omitted to do it. This is a mere fetch; it is in the face of all light and knowledge. General Fry knew that I advised that Captain Richardson's acts should be investigated at once upon his removal; he knew that I never, by word or act, put any obstacle in the way; he knew that I was never instructed or authorized to take charge of the case, but that it was specially placed in other hands, and therefore he knew that I could not have neglected the matter, much less been "*zealous in preventing prosecution.*"

The attempt to escape from the responsibility of this groundless charge, by pretending that it refers to an omission to prosecute Captain Crandall, is, if possible, more unpardonable and false than the same pretence in the case of Captain Richardson.

The proof is conclusive that there was no room for criticism in this regard in connexion with Captain Crandall. Immediately upon the suspension of this officer I forwarded to General Fry all the information I had relating to the matter, although under no obligation beyond any other citizen to do so.

A letter on the subject received from Mr. Secretary Dana was handed to Mr. Hunt, with the request that he would answer it, which he did in full, Mr. Roberts and other citizens at the same time communicating fully to General Fry by telegraph and letter, all the light they could give.

In transmitting the evidence within my knowledge, I expressed to General Fry, the opinion that Captain Crandall was honest, and that the wrong was with Haddock, and the proofs at the same time enclosed to him fully sustained this belief. (See the letters, etc., enclosed to General Fry, March 13.)

On the 2d and 3d of April General Fry had before him all the charges which he and Haddock had been able to invent or collect against Captain Crandall, and they covered all the aspersions which have ever been put upon him.

In addition to this, he had caused an inspection to be made of Captain Crandall's doings, by an officer selected by himself, who went under "verbal instructions" from General Fry, the spirit of which may be inferred from what has appeared in the case, and the result of this "inspection" was before him, as were also full reports from Captain Crandall and his counsel as to the \$20,000 of bonds.

In the light of all this, General Fry, on the 2d of April, (Sunday,) admitted twice over to Mr. Dana and to me that he knew of nothing upon the case as stated which Captain Crandall should have done or omitted which he had not done or omitted! (See Mr. Dana's evidence.)

Add to this that, in the presence of the committee at the War Department

General Fry admitted, in answer to a question from the Secretary of War, that he never had charged Captain Crandall with wrong, and never had supposed he could be prosecuted, and we shall have some idea of the good faith of pretending now that Captain Crandall should have been tried. Knowing as General Fry did, and as he knew the Secretary did, that I believed entirely in Captain Crandall's integrity, morally, as Luddington did "legally," he, of course, cannot have supposed that I was to prosecute Crandall. No imbecility on his part would admit of such a supposition, and hence there is no room for believing that an omission to prosecute Crandall can have appeared to General Fry a violation of the duty assigned by the "appointment," as he calls it, of April 3.

Again: General Fry knew that no proposal had ever been made by him or any one else to have charges drawn against Captain Crandall, or a court-martial ordered to try him, and without this, as he well knew, Captain Crandall could not be tried.

He knew also that, on the 31st of May, he himself "discharged" Captain Crandall from the service; that he did not *dismiss* him, nor dishonorably discharge him, nor hold him for trial, nor keep him relieved till further investigation, but that he discharged him. (See order.)

He knew also that in the Haddock trial the alleged wrongs at the Utica office were fully investigated; that Crandall was shown to be the foe throughout of the operations of Aaron Richardson and other brokers with whom Haddock was colluding, and that the idea of prosecuting Crandall would have provoked only indignation and derision wherever the facts were known.

He knew also that I had no part in selecting Captain Crandall as provost marshal; that I merely concurred in the selection made by others who deemed Captain Crandall eminently trustworthy; and that, in expressing confidence in his integrity, after Haddock marked him for destruction, I only united with the most honored citizens of the district, and only uttered the voice of the whole community. Nevertheless, and in the face of the positive evidence of Judge Hunt and Mr. Roberts that I declined to take part in selecting a provost marshal, and that Captain Crandall was selected wholly by others, I only forwarding the name and concurring in it, the counsel of General Fry here to-day indulge the malevolence of their client by insisting that Captain Crandall was selected by me "exclusively," as they put it.

He knew also that the facts and results fully vindicated the confidence expressed in Crandall.

But let us pass on.

The attempt of General Fry to maintain the imputation of suppressing prosecutions while pretending to conduct them, by giving evidence in relation to the arrest of Aaron Richardson, and his release without trial, is more infamous than almost any other proceeding witnessed by the committee.

Patrick J. Kinney did not appear on either list of witnesses asked for by General Fry; his name was never handed to the committee, nor to any member of it, nor was a summons applied for, until after he had been brought to Washington. He was brought to Washington surreptitiously. He was telegraphed by General Fry, May 23, to come to his "office," and again May 24. He did come, and saw General Fry in person, and informed him of what he knew; and after this, General Fry introduced him as a witness, with the deliberate design of creating an inference which he knew to be as false as it was blasting. The undeniable intention of General Fry was to create the impression or suspicion that I had been guilty of a wrong, and had acted in collusion with Richardson, or for his benefit, and not in the interest of the government, when I gave the officers about to carry him away under arrest to understand that he was making disclosures to the government.

Consider such an act! General Fry all the while knew that Aaron Richardson was the accomplice through whom largely came out the evidence of Had

dock's guilt. This fact was notorious, and was proved by the record of Haddock's conviction.

The record also showed fully the arrest of Richardson, and my entire connexion with it, and General Fry's letter shows that he examined this record at an early day.

If he did not know that the Secretary of War and the Judge Advocate General had directed that Aaron Richardson should be used as a witness, or if he ever honestly suspected there was anything wrong about Aaron Richardson's not being tried, he most certainly would have asked the Secretary, or at least have referred to the record at once.

In any aspect, this act of General Fry is without any excuse. If the charge in his letter had reference to Aaron Richardson, it was groundless and malicious; and whether his letter referred to this man, or whether he trumped up, afterward, the allegation that it did, the covert effort which has been witnessed to create an impression known to be false, and of so injurious a character, evinces a turpitude almost incredible.

Look at the next passage of this letter:

"As to the *animus* of Mr. Conkling's calumnious assault upon me, it is true (notwithstanding his assertion that he had no personal quarrels with me) that the differences between him and myself arose altogether from my unwillingness to gratify him in certain matters in which he had a strong personal interest. It is true also that he was foiled in his efforts to obtain undue concessions from my bureau, and to discredit me in the eyes of my superiors."

Is any part of this true? No proof is offered sustaining any part of it, but its falsity is affirmatively established.

Mr. Dana testifies that there never was any matter in which I had any interest whatever at the War Department or at any bureau in it. If there was any such matter it was easy to point it out.

Even upon his own showing General Fry has here misrepresented the most trifling incident in this statement, viz: that I was foiled in efforts to discredit him in the eyes of his superiors. The only instance he attempts to give of any such effort, is the letter to Mr. Dana, containing charges against Haddock, and saying that General Fry, if pure himself, is imposed upon. If this was an effort to "discredit" him, I certainly was not "foiled" in it, inasmuch as the Secretary of War put Haddock upon trial and selected me to prosecute him. If I had been "foiled" in having Haddock brought to justice, I might have escaped, and my district might have escaped, the vengeance of an unprincipled official.

Let me go to the next assertion in this letter:

"There have been three main issues between Mr. Conkling and myself. The first arose in consequence of the removal of Captain Richardson, (the first provost marshal of Mr. Conkling's district,) upon a report of Judge Advocate Turner that the proofs in his case disclosed a reckless persistence in fraudulent practices. Mr. Conkling complained of my action both to the President and War Department, but failed to procure any modification of my course."

This statement, as the correspondence which alone could sustain it shows, is utterly groundless.

There was no "complaint" whatever. The letter to the President was signed by many citizens as well as myself—among them, Judge Bacon, Mr. Walker, Mr. Clark and Mr. Roberts—and the representations it contained related to Major Haddock and not to General Fry.

He next says: "The second issue was as to the restoring of Captain Crandall, (the second provost marshal of the district,) after I had secured his removal from duty on the recommendation of Major Ludington, who thoroughly inspected the district, and reported that though not legally guilty he had morally perpetrated a most glaring and inexcusable fraud on the government he was sworn to serve, and that he had quieted his conscience by casuistry and regulated his actions

by the counsel of unscrupulous legal advisers. Mr. Conkling failed to get Captain Crandall restored, and the officer selected by me continued in charge of the business until the office was closed."

This curiously illustrates General Fry's want of singleness of purpose even in misstatement.

Captain Crandall was suspended and removed from duty March 13, two weeks before Major Ludington recommended anything. He was never suspended further, till May 31, when he was finally discharged. In one of his printed letters in the *Globe* General Fry states that Crandall was "suspended from office" on the 9th of March because he did not turn over the bonds.

But the important fact here is, that Ludington's report was dated March 31, and my sole act after that, as to Captain Crandall, was a simple recommendation or expression of opinion. And yet General Fry makes the statement I have read.

What next? "*The third issue was as to the government's employing counsel to defend Captain Crandall after he had been relieved, and had carried with him, in violation of the orders of the department, some twenty thousand dollars local bounty deposited with him in behalf of recruits, and in regard to which he got into litigation.*"

"*In this Mr. Conkling failed. Counsel has not, to my knowledge, been authorized, nor have any lawyers been paid by the government in that suit.*"

In general, this passage is intended to convey the idea that I was seeking some advantage to myself or to others from the government. It is groundless and malicious taken together, and its particulars are all wilfully distorted in order to deepen the injury to be done.

1. There never was any *issue* whatever on the subject. I did nothing in regard to it except to forward a letter to the War Department with the recommendation that attention should be given to the matter.

2. I never proposed or suggested the employment of counsel, or any other action, for the purpose alleged, to wit, "defending Crandall." On the contrary, as proved by Judge Hunt, Crandall had no interest in the matter, one way or the other. He never claimed, and could not claim, a farthing either way.

The whole question was, whether the government should assert its right to \$20,000 of bonds; and I had no part nor lot in the matter save to transmit, when requested to do so, a statement of facts to the government.

3. It is equally false that Captain Crandall "carried with him" these bonds, and, if possible, still more false that he had done so "in violation of the orders of the department." He never carried the bonds anywhere, but, on the contrary, he sacredly deposited them in a bank, and at once advised the "department" that he had done so.

When Major Haddock sought to possess himself of them for uses of plunder, as was believed, Captain Crandall consulted eminent counsel as to his duty, and was advised to preserve the bonds until the facts could be represented to General Fry, and his direction obtained. Elaborate and respectful statements, in duplicate, were at once forwarded to General Fry, through Major Haddock, and also directly. The facts were given minutely, and his direction solicited. This was repeated again and again. He was specially asked to direct Crandall to turn over the bonds to the government. But all to no purpose. He maintained a contemptuous silence, broken only by puerile and incoherent inquiries, showing an incapacity, almost imbecile, or else a poorly disguised privity with plunderers.

4. These bonds were not "local bounty," nor were they "deposited in behalf of recruits." On the contrary, as was repeatedly explained to General Fry at the time, in a way so simple and clear as to come within his comprehension, they were pledged, not as bounty at all, not in behalf of recruits, but as security against desertion, and by a recruit *broker*.

An effort was made to induce the government to claim and hold the bonds that the amount might go to the treasury. General Fry, by stupidity or dishonest neglect, trifled them away, utterly and persistently withholding aid or direction, until at length the county of Oneida volunteered to contest the case with the broker.

For directing the attention of the War Department to the propriety of looking after this sum of money, and securing it to the public treasury, an act for which there could have been no possible motive, selfish or personal, I am subjected by an unprincipled delinquent to a scurrilous imputation.

The assertions as to Captain Crandall and the bonds conclude with a fling about my efforts to invoke the attention of the government having "failed." It will be some one's duty, in the future stages of this investigation, when that range of evidence is in order, to show *why* those efforts "failed," and the same evidence may show also, perhaps, why we have "failed" in all efforts to coax or drive General Fry to the witness stand, where he could be cross-examined and exposed.

Here is General Fry's next statement :

"In support of his denial of differences with me which influenced his action Mr. Conkling states the fact that we had but one personal interview. That is true, but it proves the reverse of what Mr. Conkling asserts, for it was of such a nature as to render other interviews very objectionable. I was called to Mr. Dana's office to have a verbal discussion with Mr. Conkling on the questions at issue, but I had by this time learned too much of this gentleman to transact business with him in that way, and I declined to do so. We had, directly and indirectly, much correspondence, and generally of an unpleasant character, and I presume under such circumstances it will be granted that men's personal relations will be bad, although they may have had but one personal interview."

I propose at this point to consider this statement as to its own truth or falsehood merely. It is one of several passages in the letter designed among other things to disprove my denial in the House of having had personal "quarrels" with General Fry, in which "quarrels" I was "worsted."

When I come to the last of these passages I will consider them together, and show the groundlessness of the charge they are inserted to sustain. But, first, let me show how essentially devoid of truth they are separately, and now how untrue this one is.

Mr. Dana, while fixing the brand of falsehood upon General Fry in many other instances, does not omit this. He testifies as to this interview very minutely and positively; and how shall we escape the conclusion that General Fry, in pretending to give an account of it, was guilty of the most degrading misrepresentation?

Mr. Dana testifies that General Fry was not called in, as he says he was, "to have a verbal discussion with Mr. Conkling," but to explain something in the papers concerning Haddock, which was not intelligible from the papers themselves.

This is comparatively a small discrepancy at first view; it might almost be deemed accidental if it stood alone, but the rest of the sentence shows it to be a studied untruth, written in malice.

The letter says: "I had by this time learned too much of this gentleman to transact business with him in that way, and I declined to do so."

Mr. Dana testifies that General Fry was informed, on entering the room, that the Secretary of War had summoned Mr. Conkling to Washington in regard to Major Haddock, and the witness then narrates what followed.

Did General Fry "decline to discuss" the matter? On the contrary, he proceeded to indorse and eulogize Haddock, and to stigmatize as corrupt those who accused him or questioned his character or conduct. He said those who suspected Haddock were themselves dishonest. He declared that he had asked

an investigation for Haddock in order to enable Haddock to vindicate himself, a result which doubtless would have been reached had the proceeding been, as was intended, under the auspices of General Fry.

After admitting himself unable to say that Captain Crandall had done wrong, he proceeded to asperse the whole people of Oneida county as "*demoralized and dishonest*," and denounced them as "*drunkards, thieves, and cowards*." (See Mr. Dana's testimony.)

Mr. Dana says General Fry did most of the talking, nobody disputing with him, quarrelling with him, or in any way impeding him in the exhibition he made. Having fully expressed himself in this choice language of a soldier and an official, he was allowed to retire.

This is the interview of which he has dared to publish the version already referred to; and in continuance of his assertion that he was "quarrelled" with, he adds, that "much correspondence" has occurred between himself and me, "generally of an unpleasant character."

Where is this correspondence? General Fry's habit of treasuring letters from all quarters, whether private or not, and his freedom in making use of them, renders it certain that had any such correspondence occurred, it would have been produced, or at least sworn to by some one.

General Fry next parades in various forms the assertion that he did not sustain Haddock "a day" after he had "proper evidence" of his being unworthy, and then adds that he required "better testimony than Hon. Roscoe Conkling." He says, further, that he approved of Haddock being tried; that he suspended him from duty, and wanted him punished, not for the crimes with which Mr. Conkling charged him, but for those of which he "was really guilty," and he asserts that Major Haddock pointed out to him "instances of unfairness in his trial." This part of the letter is within the present branch of the investigation, because it assails the truth of statements made on the floor by me. The attention of the committee is invited to these statements and insinuations separately.

1. Is it true that General Fry did not sustain Haddock after he had evidence of his unworthiness; or is it true that he upheld him after knowledge was brought home to him again and again of the most crying abuses, and until at last they became so flagrant that the Secretary of War suddenly took the matter in hand and arrested Haddock in mid career?

It will be remembered that Luddington's report was dated March 31, 1865, and General Fry professes to have presented it to the Secretary of War April 1. Two days at least before this Mr. Stanton, as he himself testifies, had telegraphed me to come to Washington for the purpose of having Haddock tried. Colonel Tracy testifies that he arrested Haddock on the order of the Secretary of War, which reached him April 4, and that Haddock was then in full blast in his office at Elmira.

It cannot be denied that General Fry sustained Haddock most zealously up to April 1, which was some days after Mr. Stanton had determined to put him on trial, and yet the evidence shows conclusively that during a whole month General Fry had before him such information of the corrupt practices of his favorite as no honest man could ignore. Indeed, the proof already admitted as falling within even the narrow limits of the present branch of the investigation points to instances of guilt in Haddock, so far abetted by General Fry as to more than suggest a criminal collusion between them.

On the 28th of February, 1865, Peter A. La France transmitted to General Fry a lengthy written statement setting forth with much particularity various guilty practices in Major Haddock, of which he offered proof.

It is difficult to read this catalogue of accusations and see how a man of such capacity for believing as General Fry lays claim to, can have dismissed it

uncared for. It is still more difficult to understand how he could have referred it to Haddock himself, as he informed the committee he "presumes he did."

Haddock was afterwards convicted of the offences charged by La France, but General Fry did not deem the matter worth his while. "One swallow proves not spring," and one contradiction of an assertion of General Fry ought not, perhaps, to impeach it; let us see if his assertion last referred to is further contradicted.

Edward Maloy, a detective of the War Department, was sent in February to Utica to make a secret inspection. He did so, and reported that nothing was wrong with the officers there. He was then sent by Baker to Elmira. There he made a thorough inspection, and detected Haddock in the same kind of official corruption which La France alleged. This was February 25. He found two bounty brokers, Dalton and Weibel, in collusion with Haddock, and made his report at once to Baker, accusing all three. Baker came to Washington, and laid the matter before General Fry. Forthwith Dalton and Weibel were arrested, tried, convicted, and sent to the penitentiary.

Maloy's report, to borrow General Fry's language, was "*proper evidence*" for the incarceration of two of three confederates in crime; but Haddock being the third, justice was satisfied without molesting him; it was enough to exterminate the vermin, without expecting to disgrace a favorite of a sagacious superior, so Haddock rolled on.

If any part of Maloy's statement is untrue, Colonel Baker knows it, General Fry knows it; where are they?

Let us go a little further:

March 11 and 12, Judge Hunt, Mr. Roberts, Mr. Hopkins, Mr. Walker, and others, telegraphed and wrote to General Fry, directly and positively charging Haddock with the most flagrant corruption.

Was this "*proper evidence*," at least to put General Fry upon inquiry? Was it proper evidence for him to communicate to the Secretary of War or to some one?

Is it pretended that any use was made of it?

March 12 or 13, Captain Crandall and Commissioner Munroe having furnished me with many facts from which the guilt of Haddock was palpable, and these facts having been put upon paper, together with verbatim copies of letters and despatches implicating Haddock, the whole was put in print for General Fry's convenience, and transmitted to him. The committee is asked to examine these printed statements, and see whether for disregarding them at the time, and for asserting now that they afforded no "*proper evidence*" for action, General Fry can be acquitted of corruption except by being convicted of incapacity beyond belief.

No act or omission in this connexion stamps General Fry with delinquency more than the report of Luddington, and the orders which led to it.

Luddington was an officer selected by General Fry. What for? What does he say, in his application to the Secretary of War, he wants Luddington placed at his disposal for? To make inspection at *New York, Elmira, and Utica*. He obtained, upon this application, an order directing Luddington to report to him (General Fry) for "*verbal instructions*." Now, look at the report and see what instructions General Fry gave him. With all the proofs of Haddock's venality heaped up before him, did he direct Luddington to inspect at Elmira? With all the nauseating details of the corrupt burlesque at New York and Hoboken, of which I will speak presently, before him, did he direct Luddington to inspect at New York? Oh, no. "The board of enrolment of the 21st district of New York"—that was the sole object to which General Fry instructed Luddington to direct his inspection. Why? The board was already suspended, and the administration there in the hands of those selected by General Fry and Haddock themselves. Everything was safe. What was the need of an inspection there post haste?

What sort of instructions does the committee suppose General Fry gave this officer thus despatched? What is the value and what the mockery of such an *ex parte* investigation thus inspired by General Fry? But Luddington went, and returned with a long report, saying that he had been instructed to inspect the 21st district, and then detailing all that he heard against that district, and at the end it just barely crops out that "*incident* to the inspection of the 21st district"—mark the expression, "incident" to this—"facts were educed which led me to the conviction that Major John A. Haddock is unfit for the position he holds."

This innocent inspector having let the cat out of the bag, by showing in his report that he was to do nothing, and did nothing, but to inspect the Utica district, with still more guileless simplicity discloses that, as he understood what was expected of him, the enormities of Haddock, who ruled over fourteen congressional districts, were "incidental," and of no account; but when he stumbled over some of them two hundred miles from Elmira, where Haddock's headquarters were, he just makes a charcoal dot by the wayside.

In this place let it be remembered that though, on the 3d of April, General Fry was expressly directed by the Secretary of War to deliver to me all the papers bearing upon Haddock's case, I was compelled to prepare the charges and specifications without them, and on the 24th of April was still writing for them. The charges were filed April 14. (See letter.)

Does any member of this committee doubt, if we pause at this point, that Haddock was improperly screened by General Fry? He casts an imputation upon me by denying that he had evidence against Haddock, save that which came from me, and by alleging that evidence from me was unworthy of confidence; but the proof fixes upon him malicious falsehood, if it does not establish collusion with Haddock beside.

Let us pass to the second portion of this same passage in which General Fry attests his willingness to have Haddock tried, and his action to that end.

It is not true that he suspended Haddock from duty, as we have seen.

It is not true that he approved of Haddock's being tried.

Mr. Dana shows that he declared, after doing what he calls suspending him from duty, that he had done so in order that such an investigation might be had *as would vindicate Haddock*.

Mr. Dana shows, also, how excited and agitated he was at learning that I was to try Haddock.

Mr. Dana says he acted like a man greatly disturbed "internally," and "constrained." What about? Why, if there was nothing between himself and Haddock, should he be confounded at the tidings that a lawyer had been sent for to prosecute Haddock, whether guilty or innocent?

"What's he to Hecuba, or Hecuba to him?"

What is meant by wanting Haddock punished for the crimes of which he was really guilty, "not for those with which Mr. Conkling charged him?"

The court before which he was tried convicted him of every charge made against him. He was convicted also of every aggravated specification, either literally or substantially, and these charges and specifications contain every accusation I ever made against him.

General Fry knows this, and he also knows that the Judge Advocate General, in reviewing the case finally, says that there was a superabundance of evidence to uphold the findings; that the turpitude of the accused was almost without example, and that the sentence was surprisingly light. (See the review by Judge Holt.)

This false fling in Haddock's behalf is only the outgrowth of the affinity between them.

Of the same character is the aspersion cast upon the court and upon the Sec-

retary of War, and the President, who approved and executed the sentence, by the assertion that there were "instances of unfairness" in the trial.

I wish now to gather up and ask attention to all parts of this letter which challenge my veracity. A man who stands convicted over and over again, by the oaths of his official superiors and of others, as well as by records, of the most despicable and malicious falsifying, and who has meanly impugned the characters of many persons, may not have expected much stress to be laid upon a mere charge of untruthfulness. But I ask the committee to scrutinize this issue thoroughly.

The point is upon my having had "quarrels" with General Fry, in which "quarrels" I was "worsted." Because I denied that assertion General Fry has charged me with falsehood.

The letter opens by affirming the truth of the assertion which I had denied, and then follow several statements introduced to show its truth. Each one of these statements has been proved conclusively to be false.

But, without confining the inquiry to the matter referred to by General Fry, where can a shadow of defence be found for this reiterated statement?

1. If the attempt of General Fry to screen Haddock, and my effort to uncover him, could be deemed a "quarrel," certainly I was not worsted in it. But of course it was in no sense a quarrel, either with Haddock or General Fry, any more than any prosecuting counsel is to be deemed to quarrel with the felon whom he tries, or with his accomplices or sympathizers.

I ask the committee to consider the repeated instances in this letter in which General Fry directly and indirectly imputes to me a want of veracity because I repelled the assertion that I had had "quarrels" with him, in which I was "worsted;" and a report is earnestly asked for upon the question whether the denial I made subjected my veracity to any just aspersion.

I have now gone through this letter as far as it reflects upon me—and that is as far as you have allowed me to go—and I have shown it to be a tissue of base and groundless calumnies. Aspersing, as it does, several persons besides myself, it was written and published in bad faith, and for the purpose of blackening public and private character. The act was in defiance of the privileges of the House of Representatives, in violation of the rules and articles of war, and of the official oath of the writer, and a breach of the regulations of the department in which General Fry is a subordinate. To this is to be added the failure before the committee to give any excuse, the refusal to testify himself, and the effort to manufacture a defence by sinister and disingenuous offers of testimony, and statements of what witnesses were expected to prove. Here, in one aspect, I might stop, because the duty of the committee and of the House is already rendered clear. The turpitude involved, the flagrant character of the offences, and the infraction they constitute of the military law to which General Fry is amenable, first as a soldier, second as an officer, and again as an executive officer of the government, would before any tribunal point to but one result. Malicious falsehood, denominated in the military code "lying," alone, as the committee is aware, is one of the most heinous crimes an officer can commit. Mere cowardice is punished with the last severity and ignominy; but what cowardice could be more detestable than that which, having sought by false accusations to destroy character, skulks away both from reparation and responsibility, and, having no other proof to substantiate its assertions, shrinks from the ordeal of a personal examination, and, even upon an investigation like this, resorts to the attempt to fabricate and sustain fresh imputations known to be false? If the evidence has this extent, it would seem to be painfully abundant.

But the worst yet remains to be told. General Fry stands convicted, beyond all this, of official delinquency, with which the committee must deal.

In the branch of the investigation which is about to close, the committee has observed a rule of evidence which has, for the time being, shielded General

Fry from all proof of general misconduct, such as will come within the range of the branch of the investigation reserved for the future. No evidence has been admissible against General Fry thus far, unless it bore distinctly upon one of two points. It must show the falsity of some statement in the letter relating to me, or else it must show to the motive with which the letter was written and published.

Restricted to this narrow range, the evidence reveals a state of facts and fixes them past controversy, in the face of which no man, by the laws of this country, can remain the head of a bureau or an officer of the army.

General Fry has had the fullest opportunity to answer the proof referred to in any and every way. Every mode known to me has been resorted to to induce him to make denial by his own oath, but in vain. He steadily, by the advice of counsel, one of them a military officer, as well as a lawyer, has declined to present himself as a witness. He has even omitted, after deliberation, to call other witnesses who could certainly contradict the testimony to which I refer, if, indeed, it had been false. Instead of this, he has offered letters and despatches, written by himself, and papers of other kinds, which, it will be found, are not to the purpose.

If after this full opportunity, in his own defence, General Fry is found to be guilty of the gravest official and personal crimes, it is believed that the committee, under its responsibilities, must so pronounce, and must recommend such action also as is called for by the facts. I will endeavor to put before you, as briefly as I may, the results of the evidence now referred to.

In the first place let me bring together the facts which must be treated as incontestable.

In February, 1865, a scheme was set on foot, General Fry being privy to it, to "capture bounty jumpers and deserters" at Hoboken, New Jersey, a locality historic for tragic occurrences and startling effects. The plan in brief was this: A recruiting office was to be opened, and "bounty jumpers" were to be baited and enticed until it should become a crowded resort, and then, when the time was ripe, great numbers were to be "bagged," in the phrase which seems to have been employed.

The *modus operandi* was to be as follows: Day by day a limited number of "jumpers" were to be enlisted, and to be paid the amount of local bounty being paid at the time in New Jersey to volunteers, and then they were to be immediately allowed and induced to desert, carrying their bounty with them. These "jumpers" were expected to spread the news of the Hoboken "walk away" to the other "jumpers" around about, and as the fame of it went abroad, more and more "jumpers" were looked for to come, and at the appointed day all who came were to be taken in and held under arrest. The operation began on or about the 4th of March, and from four to seven "jumpers" a day were enlisted, paid six hundred dollars each or thereabout, and taken to the back door, and suffered to depart. On the 10th of March, 183 "jumpers" were enlisted, and in place of being passed out the back door, were passed up a stairs into a room, where they were held. They were transferred thence to Fort Lafayette, and there confined a month or so, and then discharged without trial.

This is the naked statement of the first chapter of this history, putting it in the light most favorable to General Fry, and, before going to the worse stages of it, I wish to direct attention to one or two considerations. The plot was very unique. Men were enlisted as soldiers, and paid large bounties on purpose to have them desert, which they were allowed and induced to do confessedly with the connivance of General Fry. Of course it was not expected to punish these men for thus deserting, because the government was itself made the instigator. But it is explained to us that the purpose was through those who thus deserted by collusion to allure others to come that they might be arrested. Arrested for what? For some past desertion or other crime? How could this be? If there

were men who could be identified, and held, and convicted for any offence previously committed, how could it be necessary, how could it be even an honest farce, to go through the ceremony of enlisting them as soldiers, merely as a mode of arrest, merely as a mode of taking their persons into custody?

It cannot be said, either, that, having been mustered into the military service, any of them were to be held for the act of being thus mustered in, without deserting afterwards.

What, then, is the apology for the Provost Marshal General of the United States being a party to such a transaction, even if this were the whole of it? But let us see what further is undisputed.

These "jumpers," thus to be enlisted without any design that they should ever enter the military service, but with a positive design that they should not, *were to be credited upon quotas and returned and counted as so many recruits furnished to the army.*

This was by a private order issued by General Fry himself, and produced to the committee.

It will be observed that this order was not issued as orders usually are, through a subordinate, but by *General Fry in person*, and marked "*special and confidential.*" (See the order.)

It is not denied—it cannot be denied—that this order had reference to these fraudulent and fictitious enlistments, and that it was issued expressly to cover them, and for no other purpose.

If there is anything to palliate this; if General Fry had any understanding of facts, or considerations which excused it; if he was a dupe in the matter, he knows it, and he could state it. Truth is never left to stand alone. If there was an honest or an innocent reason for this, however mistaken it may have been, or however hard it may be to imagine it, General Fry would have been safe in stating it; nay, would he not have been impelled to state it?

But let us go a little further. Not only were these men to be "credited" as soldiers, *but a firm of bounty brokers were, by an understanding with General Fry, to be allowed to sell these "credits," to any locality which would pay the highest price for them.*

Perhaps I am not literally correct in speaking of this as an uncontested fact. Let us see whether it is controverted or even denied.

It is admitted that local bounties were to be advanced to the men at the time of enlistment; at all events, this was to be so up to the last day. This was, of course, an indispensable part of the scheme. It is admitted, also, that Allen, Hughes & Riley were to furnish these bounties, as they did do in fact. It is not even suggested that these brokers were put in funds to pay the bounties, but it is conceded that they provided the money themselves. It follows that the only way they could reimburse themselves for these advances, indeed the only way they could keep themselves in funds to pay the bounties day by day, amounting as they did to several thousand dollars daily, was to dispose of the credits and realize upon them at once. It cannot be denied that the recruiting officer who acted under the orders of General Fry, the provost marshal of the district to which the credits were sold, the authorities of that district, the brokers themselves, and all concerned in the transaction, whether privy to it, or imposed upon by it, acted upon the idea that the credits were to be sold as they were in fact sold, and there is nothing to show that there was any different design on the part of General Fry, but, on the contrary, everything shows that he intended and arranged that the sale should take place.

It must not be forgotten either, that Allen swears that his firm paid the entire expenses of all kinds of the Hoboken exploit, and this fact is nowhere denied or disproved.

Having thus spoken of what it was intended to do, let us come to what was done.

Having sold credits for all of these enlistments made previous to March 10, having received the money, and having in several ways General Fry's indorsement of the act, Allen & Co. and Lieutenant Colonel Ilges (the officer detailed by General Fry to do the business pursuant to an arrangement between General Fry and Allen) proceeded on the 10th of March, as has been stated, to muster in one hundred and eighty-three "bounty jumpers." The same proceedings in all respects were taken as to these that had been taken as to their predecessors, except that they were not induced or allowed to desert, and no bounty was paid to them or to most of them. But they were regularly examined, enlisted, and mustered in, their enlistment papers and muster-rolls made out and certified and signed by Colonel Ilges, who, it is fair to say, seems to have acted under protest at every step. All this being done, *these credits were sold to Jersey City by Allen & Co. with the knowledge of Colonel Ilges, and General Fry was at once informed of it. The papers were handed over to the mayor of Jersey City, and he paid Allen & Co. for the credits the sum of one hundred and twenty-five or one hundred and twenty-six thousand dollars.*

At the time the money was paid Colonel Ilges referred to a general order which he said he should enforce in the case before him, and which required the mustering officer to detain from the broker \$300 per man for every man put in by him. This amounted to \$54,000, which Rieley, the member of the firm of Allen & Co., who seems to have acted as cashier, thereupon paid to Colonel Ilges under the requirement already stated.

It may be useful to bear in mind what sort of a fund this \$54,000 was, and where, in fair dealing in cases of ordinary enlistments, it would have belonged. Had the enlistments been *bona fide*, and had the men gone to the field, the \$300 per man would have belonged to the recruits; had they deserted, the \$300 per man would at once have become deserters' money, and been turned over as such to the United States.

These men did not go into service, but were treated as deserters, though presently discharged, and it would seem that if, imposed upon by the appearances held out by those who for this purpose represented the government, Jersey City was led to pay its money in good faith for the credits, and the money, or any part of it, afterwards came under the control of the government, the natural and just course was this: the credits should have been allowed, on the ground that they had been honestly paid for under circumstances for which they were responsible, whose acts bound the government as to innocent third persons, and the money should have gone into the treasury. It is submitted that, unless some agreement made by General Fry, or some act of his, changed the original rights of the parties, this was the situation of the matter at the time of which I am about to speak.

Mr. Stanton took the same view, in part at least, as appears from his order made afterwards, which shows that he felt constrained, even by what came to his knowledge, to hold that Jersey City had so far acted upon the faith of acts done in the name of the government, that the credits given could not justly be revoked.

Let us see now what became of this \$54,000—what General Fry did in regard to it, and how his conduct reflects upon this case.

This brings us to the testimony of Theodore Allen, and the testimony which corroborates Theodore Allen, and the committee is asked to scrutinize it in every way, and especially to note the respects in which Allen, by his testimony, exposes himself to contradiction if he is false.

The narrative of this witness is briefly as follows:

He was, in January and February, 1865, with his partners, engaged, in New York, in the recruit and bounty brokerage business. He was applied to by Colonel L. C. Baker, who came as the confidential representative of General Fry, to aid him in breaking up frauds in recruiting. Much negotiation ensued

and Colonel Baker entered into an arrangement with him, which General Fry was, by Baker, pledged to carry out. The witness was fully cross-examined by the counsel for General Fry and in the presence of General Fry, as to the terms of this understanding, so as to lay the foundation for a contradiction, and the form of the examination clearly implied that such was its purpose. The witness stated that Colonel Baker agreed that "jumpers" should be credited and the credits sold for the highest price, and went minutely into the conditions which Colonel Baker made in advance of Allen's seeing General Fry personally. It was vital to contradict him in these particulars if possible, because, as he testified that he related them to General Fry in their first interview, it would have destroyed the witness utterly to impeach the foundation of his story. The form of asking for a summons from Colonel L. C. Baker was gone through with, and although it appeared in the testimony that Colonel Baker was in the city of Washington at the time, it is impossible not to notice, in passing, that we have not seen him upon the stand.

But continuing the narrative, Allen testifies that, on a day which he fixes, Colonel Baker came to him saying that General Fry wanted to see him in Washington. Here is a fact which requires us to pause a moment. I say *fact*, because if it were not a fact, Colonel Baker would certainly have been called to disprove it. Why did General Fry want to see Allen? Baker was constantly passing to and fro between Washington and New York, and he and General Fry kept the wires vibrating with interchanges of thought. General Fry knew from Baker what had occurred, and what had been agreed upon with Allen. If Baker had not told him, Baker could have told him fully as to all that. But he wanted to see Allen in person, and Allen went to Washington.

He says General Fry received him very cordially, and requested two persons whom he found in the room to leave them in privacy. Is this statement true? It is not denied that Allen came to Washington to see General Fry, that he did see him, and at his office in the War Department. Did he see him alone? If not, where is the person who was present? No suggestion was made to the witness on his cross-examination that any one was present, but a young man is brought from Philadelphia to swear that he was the clerk of General Fry, and that he was not present when Allen was, and was not one of those asked to leave the room. De Corsa is this gentleman's name, and his identification with General Fry is suggestive of the "Corsican Brothers." Does he prove anything, however, which in the remotest way militates with what Allen says?

Allen states that a full talk was had between himself and General Fry at the time in question, in which talk it was agreed that sham enlistments should be made, that credits for these enlistments should be given, and that these credits should be sold for whatever they would bring, and the profits of the operation should go—not into the treasury, certainly.

A satisfactory understanding having been reached, the parties separated after arranging some details. Allen requested, he says, that Colonel Ilges should be selected as mustering officer, as he had mustered for his (Allen's) firm before, and that an order should be made as to the credits which among other things should remove an impediment likely otherwise to be found in the fact that Colonel Ilges was a regular army officer, and not, therefore, authorized to act in connexion with the provost marshal, or the provost marshal in connexion with him, in allowing credits. This, he says, General Fry agreed to do, and we know it was done. (See order.) Allen returned to New York, and at once set about his labors.

He says that after his doings at Hoboken had culminated, as I have previously related, and about the 16th or 17th of March, General Fry telegraphed to New York that he wanted to see him (Allen) again. Here is another very exposed point. Allen says Colonel Baker saw the despatch, and, besides, files and rec-

ords are kept; and the date being fixed by Allen, if such a despatch was not sent, the operator at either end of the line could contradict him.

He came at once to Washington, and the train being delayed he reached the War Department, as he says, after business hours. Being denied entrance to the War Department and to General Fry, he told the doorkeeper that if General Fry knew he was there he would see him, and sent in his card. As he predicted, this gained him an audience instantly. He says General Fry saw him in his room alone, having signified his wish to be private. But Mr. De Corsa doesn't remember being there when this happened. He says he didn't see Allen then at all. Is it denied that Allen was there, and there at that time, and had a private interview with General Fry, and on the subject which Allen says was the subject between them? Is any part of this denied? If it is *not*, why go through the parade of calling Mr. De Corsa from Philadelphia? If it is denied, the denial is shown to be false, as we shall presently see by evidence, documentary and otherwise, which puts it beyond all question.

The committee is asked to read the whole of this interview as detailed by the witness, between the almost incessant interruptions and contests over the form and technicalities of the questions put to him, by which a day was consumed. Its attentive, searching reading will reveal many tests of its truth in connexion with other evidence.

Allen says he reminded General Fry that he had come in answer to his despatch. General Fry said yes, and at once referred to the Hoboken matter. General Fry presently inquired "*what had become of the money?*" Allen said he had over \$60,000 of it. General Fry then inquired, *what he was going to do with it?* Allen said he was going to keep it, according to their previous agreement. General Fry then inquired *if Baker had not asked for some of it?*

Allen, soon after this, explained that there was \$54,000 more in Colonel Ilges's hands, which his firm had been compelled to pay in, as heretofore explained, and that he wanted an order for it from him (General Fry,) as he could not get it without.

Suggestive as the interview had been up to this point, when we consider the circumstances and the parties to it, it here became still more significant. General Fry, the witness says, approached him, putting his hands on his shoulders, and with a spirit and manner which may be better inferred from what followed than described, he proceeded to ply him with the very lechery of persuasion. He informed the witness that what he wished most to talk with him about, and what he sent for him for, was a matter at Utica, and this he proceeded to explain. He told him that he wanted evidence which would convict Captain Crandall of fraud, and which would fasten some imputation upon me (Mr. Conkling;) this was the point he labored. Allen told him that from his information he believed that the facts at Utica would point to Haddock as the guilty party, and not to Crandall. To this General Fry at once replied that he did not want evidence against Haddock, but against Crandall, and that he wanted something "*at all hazards*" which would implicate me (Mr. Conkling;) that I had set myself up as a champion of Crandall, &c., &c., and that he wanted to find something against me. He told the witness that he knew *he* could do it, and he did not know any other man who could; that he would not trust any of Baker's men, &c., &c., and that he must go to Utica and do what he wanted; and if he would he (General Fry) would make an order while he was gone directing the \$54,000 to be paid over to him. After some further conversation, Allen said he would see what he could do. He then told General Fry that the order had better be to pay the money back to the party who paid it, as Riley was the cashier of the concern and had paid it to Ilges, and was the one to receive it.

The interview closed with further and repeated injunctions by General Fry to obtain the desired evidence, and assurances that the order should be made. Allen returned to New York, and, as he says, disclosed to four persons, who are named, what had transpired between himself and General Fry. I could not call these persons to testify to what Allen told them; the rules of evidence would not allow it; but General Fry could have called them, and would have done so if they could have contradicted Allen.

The committee, however, permitted some things to be proved by Allen and others as to what followed this interview of March 18.

Allen and the four persons to whom he revealed the interview with General Fry held frequent consultations as to what course to pursue, and as the result of these consultations, the following plan was hit upon:

Allen did not go to Utica, but waited quietly for five days, visiting Albany meanwhile, and at the end of this time, and on the 24th of March, a sufficient space having elapsed to have enabled him to go to Utica, a despatch was written to General Fry by one of the four persons in the secret, signed by Allen, and sent to General Fry. Here is the original despatch:

“ASTOR HOUSE, NEW YORK, *March 24, 1865.*

“Brigadier General FRY,

“*Provost Marshal General, Washington, D. C.*

“*I have just returned from Utica, and Colonel Ilges refuses to deliver the money received from me because your order is dated the 11th instead of 10th March. Please answer through Colonel Baker.*

“THEO. ALLEN.”

We shall see in a moment what order these dates referred to; but first let us follow the sequence of events.

This despatch did all that its authors contrived it to do, and in a few hours the desired answer came, “through Colonel Baker,” as requested. Here it is:

“WAR DEPARTMENT, PROVOST MARSHAL GENERAL’S BUREAU,

“*Washington, D. C., March 24, 1865.*

“I have been informed by Theodore Allen, of New York, that Colonel Ilges declines to turn over the money received from the bounty jumpers, as directed by me, on the 11th instant. *I wish you to see Colonel Ilges and have him turn over this money as directed.*

“JAMES B. FRY,

“*Provost Marshal General.*

“Colonel L. C. BAKER,

“*No. 12 Vesey Street, New York.*”

Baker took this despatch to Colonel Ilges, and he went with Allen and his partners to the Broadway National Bank and there made a check, payable to Allen’s firm, for \$54,000, and the money was paid over on the spot. (See check copied in report of Colonel Ilges.)

Speaking as this transaction is, in its fixed and unmistakable features, and positively as it is sworn to, it is just to General Fry that the committee should require Allen to be fortified. Partly for this reason and partly to put upon General Fry a necessity to submit himself to examination, which it seemed to me he could not disregard, I offered in evidence, in connexion with the testimony of Allen, the testimony of Edward Maloy, who corroborated every statement which the rules of law and the objections made by the counsel for General Fry would permit me to inquire into. I offered also certain despatches from General Fry, which may be referred to here as well as anywhere. The first is as follows:

"PROVOST MARSHAL GENERAL'S BUREAU,
"Washington, D. C., March 18, 1866.

"Colonel L. C. BAKER, No. 12 Vesey Street, New York.

"Allen is here, and tells me he can provide information about the Utica district. I have told him to do so. He starts back to New York to-night, and will see you. Produce all the facts in the case.

"JAMES B. FRY,
"Provost Marshal General."

It will be seen that this despatch proves beyond cavil that Allen was in Washington at the time he says he was; that he had a conference with General Fry on the subject of "*providing*" information about the Utica district.

The committee is asked in the light of this despatch, and in the absence of all explanation, and with General Fry declining to trust himself upon the witness stand, what General Fry summoned Allen to Washington for, and how he came to be in confidential intercourse with him about "*providing*" information in regard to Utica?

How came Allen to "tell" him he could "*provide*" such evidence? A few other questions as to this mysterious interview may test Allen's truthfulness.

What honest use had General Fry for Allen in such a connexion? He had Haddock and his corps of detectives and messengers; and he knew that Haddock's salvation depended upon shifting from his own shoulders to Captain Crandall's, the guilt which must rest somewhere for what had been done and attempted at Utica. It was certain, therefore, that Haddock would leave no evidence unfound. General Fry had Colonel Baker and his emissaries also at his beck and nod. He had them actually at that very time on the scent, as the evidence shows, to hunt up something at Utica. Carlile and Gall had been to Utica already, as he knew; so had Maloy; all being picked detectives.

Besides all this, General Fry had at this time selected an officer, Major Luddington, to go to Utica. He had procured him to be detailed, subject to his "verbal instructions," and Luddington had been despatched to Utica, and Baker had been telegraphed to help him.

All this machinery was in General Fry's hands; all of it had been set in motion against Crandall; nothing had been done toward investigating Haddock, though proofs and accusations against him lay in piles before General Fry; and yet Theodore Allen, in addition, is telegraphed to Washington to "*provide*" information as to the Utica district.

Was this interview with Allen on March 18 a private one? If it was not, who is the man who witnessed it? If it was private, what was the occasion of privacy? Did General Fry have any private or public business with Allen at that time which he is willing to explain? Was any suggested on Allen's cross-examination? Did he make any record of his business with Allen on that day?

It must not be forgotten that the counsel for General Fry, with General Fry present and prompting him, in his questions to Allen, on cross-examination, as to the interview of March 18, pointedly assumed that the \$54,000 was a subject of discussion.

Look at another despatch sent the day after General Fry believed Allen had been to Utica, the day after he made the order to pay him \$54,000:

"PROVOST MARSHAL GENERAL'S BUREAU,
"Washington, D. C., March 25, 1865.

"Colonel L. C. BAKER, New York:

"You must prepare all the facts in the case of the Utica district without reference to Major Luddington's report. It is absolutely necessary for me to

have them, whether Major Luddington has been able to obtain them or not. See Allen and let him make it his business to straighten this matter out.

“JAMES B. FRY,
“Provost Marshal General.”

This despatch is ten days after Baker had telegraphed General Fry—

“I have discovered extensive and astounding enlistment frauds at Elmira, New York. I am well satisfied that Major Haddock is a party indirectly connected with these frauds,” &c.

Yet no anxiety is felt to explore Haddock, but General Fry is in frenzied pursuit of an object at Utica. The committee will find food for reflection here.

In further corroboration of Allen's statement is an order to Ilges, dated March 19, the day after Allen's second interview with General Fry, in which Ilges is ordered to pay over the money received in connexion with the “jumpers,” and saying that the credits are to be *disallowed*. If the committee can discover any relief for General Fry, in the fact that, in addition to all his other acts, he proposed to deprive Jersey City of the credits for which the money had been honestly paid, and paid in consequence of his own plan and his own orders, he will, no doubt, receive the full benefit of the fact. I am not able to suggest any argument to be derived from it, except one which sinks General Fry still lower as an officer and a man.

It may be argued that General Fry acted in ignorance of some fact in ordering Colonel Ilges to pay the money to Allen's firm. It may even be insisted that General Fry did not know to whom it was to go; that he may have supposed it was advanced by the authorities of Jersey City, and would go back to them. To show that all this would be an afterthought if suggested, as it is fair to the counsel for General Fry to remember that it has not been, and also to sustain Allen, I refer to the report of Colonel Ilges, and to the letters to and from General Fry, which there appear. It will be seen that every fact was brought home to General Fry's knowledge; that the action of General Fry shocked and confounded this officer; that he obeyed orders under protest, and delayed obedience till he could confer with General Fry by letter, and that he actually proceeded to Washington and laid the case in person before him, and that General Fry ordered the money paid to Allen, Riley, and Hughes, after all this.

The following passages in this report are commended to the attention of the committee.

It will be seen that they corroborate Allen throughout, and render yet more clear the guilt of General Fry.

Extract from the statement of Lieutenant Colonel Ilges.

“Messrs. Allen, Riley, and Hughes furnished the recruits with the local bounty. The amount was established by me as three hundred dollars, this being the amount of bounty paid elsewhere. These gentlemen were permitted at and admitted to my office for the following reasons:

“I. They came to me through Colonel Baker. They were recommended to me as the instruments of, and in the confidence of, the government.

“II. They produced to me a document showing that they were the representatives of the city of Hoboken, New Jersey, the said document being a contract between them and the city council of Hoboken to fill the quota of said city.

“III. They furnished me with a copy of the following telegraphic despatch, viz:

“WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,
“Washington, D. C., March 5, 1865.

(“Original by telegraph.)

“Captain HARRY J. MILLS, Provost Marshal, Newark, New Jersey.

“Until otherwise ordered, you are directed to allow credits for such men as Brevet Lieutenant Colonel Guido Ilges, captain 14th United States infantry,

certifies to you are enlisted by him. He is recruiting at Hoboken. Inform Colonel Ely of this order. *The case is special and confidential.*

“JAMES B. FRY,
“Provost Marshal General.”

“In order to muster in volunteers, as I was instructed to do, I had to obtain the money to be paid to them as bounty and to brokers as hand money from some quarter, and these three men came to me with the sanction and in the confidence of the authorities, and as proper representatives of certain localities. Therefore I felt justified, and still feel so, under the then existing circumstances, that I was then doing right and endeavoring to promote the interests of the government. Besides, Colonel Baker was fully aware of the manner in which the business of my office was transacted, as in conversations with him at different times I informed him of everything in connexion with my office. On the 10th day of March, 1865, when the aforementioned one hundred and eighty-three bounty-jumpers were mustered in by me and kept by me in confinement, and also on the following day, I hesitated and declined to credit these men to any of the localities; but upon consideration and the re-reading of the order received in regard to credits, (copies of which are given with this report and made a portion thereof,) and when the mayor of the city of Jersey City informed me that Colonel Baker had assured him that the credits allowed by me are “all right,” I concluded to pursue the following course:

“To take charge of the \$300 bounty money of each one of these 183 recruits and to deposit the same in National bank, subject to the order of the Provost Marshal General.

“I considered it my duty under the then existing orders regulating the mustering service, that the bounty money of each one of the 183 recruits should either be paid into their own hands, or should be deposited and in my own hand at all events, that this money should actually be paid by the parties who received the credits.

“I thought then, and still think, that these men, if they were to be kept in the service without being proven deserters of other military organizations before their enlistment with me, were fully entitled to the amount of local bounty; but that if they were proven deserters, the United States treasury should be the recipient of this money.

“Messrs. Allen, Riley and Hughes accordingly paid into my hands the sum of \$54,000, this being the amount of bounty claimed by me as due to 180 recruits. The said party were to pay into my hands the sum of \$900 more, for the remaining three recruits; but they failed to do so, telling me, upon my repeated application for this amount, that it was not necessary for them to do so, *as the amount in my hands (\$54,000) would be paid back to them within a few days by order of the Provost Marshal General.* This amount (54,000) was deposited by me in the Broadway National Bank, March 15, 1866.

“I immediately wrote to the Provost Marshal General at Washington, D. C., asking for instruction whether to pay this amount to the recruits then in confinement, or to the commanding officer at Fort Lafayette, who had charge of these men, or whether I should turn it into the United States treasury. In reply to this letter I received, on the 20th of March, the following communication:

“WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S OFFICE
“Washington, D. C., March 19, 1865.

“COLONEL: I am directed by the Provost Marshal General to inform you that the credits of the men mustered by you March 11, 1865, at Hoboken, New

Jersey, and credited to Jersey City at large, are disallowed, *and that you will refund the money to the parties who advanced it.*

“‘ I am, colonel, very respectfully, your obedient servant,

“‘ W. OWENS,

“‘ Captain 6th United States Cavalry, A. A. A. G.

“‘ Brevet Lieut. Col. GUIDO ILGES, U. S. A.

“‘ Mustering Officer Hoboken, New Jersey.

“‘ *Thinking that the Provost Marshall General might not fully understand this whole matter, I deemed it my duty to write to him the following communication in explanation before paying back the money, viz :*

“‘ RECRUITING SERVICE, 14TH INFANTRY,

“‘ 163 Hester street, New York city, March 21, 1865.

“‘ CAPTAIN : I have the honor to acknowledge the receipt of your communication of March 19, 1865, informing me that the credits of men mustered by me March 11, 1865, at Hoboken, New Jersey, and credited to Jersey City at large, are disallowed, and instructing me to refund this money to the parties who advanced it.

“‘ I beg leave to state that no men were mustered by me on the aforesaid date, but I infer that this communication meant to say the 10th instead of the 11th of March, 1863.

“‘ I would respectfully state that on the said day four regulars were mustered by me, and that if their credits are not to be effected they should be excluded in the order. I mustered on the 10th day of March one hundred and eighty-three volunteers for three years, so-called bounty-jumpers, and they were credited to Jersey City at large, with the exception of fifteen recruits that were credited to Clinton township, Essex county, fourth congressional district, New Jersey.

“‘ I would further state that I have at my disposal \$300 local bounty for each of these one hundred and eighty-three recruits, *and that I received this amount from Allen, Riley & Co., who had contracted with the counties for these credits ;* and I would, therefore, respectfully request that you inform me *whether or not I am to refund this money to these parties, or to the proper representatives of the places who received the credits.*

“‘ These one hundred and eighty-three recruits were properly mustered into the service by me, and I credited them according to instructions and orders regulating the mustering service. None of these recruits have as yet been proven to have been credited before ; and when I gave these credits I did so as a United States officer, believing that I was doing my duty, and advancing the interests of the plan of Colonel Baker, sanctioned by the Provost Marshal General. I am informed that the county representatives who received these credits paid a large amount of premiums to Messrs. Allen, Riley & Co. besides the \$300 local bounty ; and as they have done so after having been informed by me of the correctness of these credits, I would respectfully call your attention to the fact that when these credits are disallowed the said localities will lose a large amount of money paid out by them in good faith. I am not aware what amount of money was paid to Messrs. Allen, Riley & Co. for each recruit, and cannot even give a probable guess, as I only collected the usual amount from them—\$300 for each recruit, this being the amount of bounty paid to a recruit enlisted at Hoboken, New Jersey.

“‘ I would here add that Messrs. Allen, Riley & Co. are the parties who carried out the plan above referred to, and I only allowed them to be present in my office, and to contract for these credits contrary to existing orders, after I had been assured by Colonel L. C. Baker, special agent of the War Department,

that the whole proceeding was sanctioned by the Provost Marshal General United States army.

“I therefore respectfully request that you inform me, at your earliest convenience, what disposition I am to make of the money referred to.

“I remain, captain, very respectfully, your obedient servant,

“GUIDO ILGES,

“*Capt. 14th Infantry, Brevet Lieut. Col. Vols., Recruiting Officer.*

“Captain W. OWENS,

“*5th U. S. Cavalry, A. A. A. G., Washington, D. C.*

“In reply to this letter of the 21st I received on the 24th of the same month the following reply :

“WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,

“*Washington, D. C., March 23, 1865.*

“COLONEL: I have the honor to acknowledge the receipt of your communication of the 21st instant, and, in reply, would state that the communication of the 19th instant, referred to, was intended to cover the cases of the 183 so-called bounty-jumpers, and that the amount which you received for the purpose of paying bounties to these 183 so-called bounty-jumpers the Provost Marshal directs to be refunded *to the parties who advanced it.*

“I am, colonel, very respectfully, your obedient servant,

“W. OWENS,

“*Captain 5th U. S. cavalry, A. A. A. G.*

“Brevet Lieut. Colonel GUIDO ILGIS,

“*United States army, Hester street, New York.*

“Messrs. Allen, Riley and Hughes, in company with the aforesaid Mr. Stanley, called upon me on the 24th of March, and they (seeming aware of the foregoing order) demanded of me the \$54,000, and, upon my refusal to give up the money to them until I could see Colonel L. C. Baker and ask his advice in the matter, they informed me that legal proceedings would be forthwith instituted in order to compel me to give up to them their money. I immediately called upon Colonel L. C. Baker at his office, but being unable to see him then; I proceeded to the office of the United States district attorney, D. L. Smith, No. 12 Chambers street, and laid my case before one of the attorneys of his office, who advised me not to give up the money until I had further orders from Washington. I also called upon several other regular army officers of the city, and was by them advised to the same effect.

“*On the 25th of March, 1865, I was again sent for by Colonel L. C. Baker, and upon my arrival at his office I was shown by him a telegraphic despatch from the Provost Marshal General to him, directing him to order me to turn over the amount of money (\$54,000) held by me as bounty for these 183 so-called bounty-jumpers, to Messrs. Allen, Riley & Co.*

“After hesitating and waiting nearly one hour at Colonel Baker's office, I proceeded to the National Broadway Bank, accompanied by Messrs. Allen, Riley, Hughes and Stanly, and there drew the following check, viz :

“No. 24.

NEW YORK, March 25, 1865.

“*National Broadway Bank, pay to Messrs. Peter Riley & Co., or bearer, fifty-four thousand dollars.*

“\$54,000.

“GUIDO ILGES,

“*Capt. 14th U. S. Inf., Brevet Lieut. Col. U. S. A.,*

“*Recruiting Officer.*”

"Which check I handed to Mr. Peter Riley in presence of the aforesaid gentlemen, who presented the same to the paying teller at the said bank, and received \$54,000 in national currency therefor.

"It is also proper for me to state that on the 17th of March, having received permission, I proceeded to Washington city, *and in person related to the Provost Marshal General United States army all the details connected with the office at Hoboken, the capture of these 183 so-called bounty-jumpers, and the amount of money in my hands*; asking at the same time for instructions in regard to the disposal of this money; to which he replied that further orders would be sent to me by mail. I expressed to him my fear that at some future day I might be called upon for explanations why I had at my office at Hoboken acted contrary to existing orders and regulations governing the mustering service, *and that I intended to ask for a court of inquiry, when the Provost Marshal General assured me that I had done my duty well, and only obeyed orders.*"

What answer does General Fry make to all this evidence, direct and circumstantial, oral and documentary? He attempts to impeach the general character for truth of Theodore Allen. We shall see, if we have not seen already in the argument, that Theodore Allen is only one of the rivets fastening the evidence, and that if we were to drop him altogether from the case General Fry would still be hopelessly entangled.

But as all parts of the evidence should be fairly weighed, let us examine the attempted impeachment, and while we do so let us forget how far-fetched such evidence was, compared with other kinds of proof at once accessible and effectual against Allen, if Allen testified untruly. When this witness was introduced to the committee-room it could not be, or rather it was not, disguised that the counsel for General Fry was somewhat nonplused. No sooner was the general nature of his testimony apparent than motions for delay began. Various reasons were assigned for a postponement of the examination of the witness, and at last the day was worn out in these repeated efforts on behalf of General Fry. But before the sitting ended there was entered on the record a full notice in substance of what the witness was relied upon to prove. After this, an entire week elapsed before General Fry was compelled to proceed with his evidence in reply; so that very ample time was allowed to collect impeaching testimony.

The result is before the committee. Three witnesses from New York were asked for. One of these, Mr. Kennedy, superintendent of police, was afterwards stopped in coming, it seems, on the application of the counsel of General Fry to a member of the committee. It subsequently dropped out, on the examination of Carpenter, that Mr. Kennedy knew Allen well, and had been heard to speak of his character, but not in the direction desired by General Fry.

But Carpenter and Pettey came. It is enough to say of Carpenter that he on the stand confessed that after being applied to some three days previous to the day on which he delivered his testimony, he went around to see if he could find some one who would speak against Allen, in order that he might refer to them as the persons whom he had heard speak against him. He said he knew it was customary to ask witnesses whether they had heard others speak against the witness to be impeached, and he intended to qualify himself before he started. It only remains to say of this witness, that he further stated that he disclosed his testimony to General Fry in person, before being called to the stand. There was, therefore, no surprise about his testimony, and no mistake about the act of advisedly bringing the witness forward.

Mr. Pettey was not asked whether he would believe Allen on his oath, although attention was called at the time to the omission.

General Fry next called a policeman who has lived in Washington five years, and knew Allen seven years ago. This was the third witness, and was produced after a personal interview with General Fry. He, also, was not asked

whether he would believe Allen, although he was called for the purpose of being so asked, as we were given to understand.

The fourth and last witness was a young officer who never lived in New York, but served at that place on the staff of General Dix for a large part of a year. He had heard comments by other members of the staff upon Allen in regard to recruiting, and nothing else. The witness, without being asked whether or not he would believe Allen, was allowed to close the procession, four in number, of impeaching witnesses. It is not too much to say, when the nature of the testimony given by Allen is borne in mind, and also his admitted relationship toward General Fry, and his avowed connexion with the Hoboken transaction, that the idea of withholding both Generals Fry and Baker as witnesses, and at the same time making a labored effort at attacking the general character of the witness, is a display of tactics almost, if not altogether, grotesque. It is a Chinese warfare. But when we compare the performance with the advertisement, it awakens renewed wonder that General Fry should not have felt able to brave the dangers of giving testimony himself of matters known to him better than to any one else, and which call so loudly for explanation or denial.

The expedient of endeavoring to distract attention from the absence of the evidence for which instinct and reason alike cried out, if indeed Allen were untruthful, was rendered the more sorry by the appearance of nine or ten well-known, respectable citizens of New York, including a member of the House, who fully sustained the witness and overthrew entirely the faintly attempted impeachment.

I propose now to examine in some of the more obvious aspects of the case the question whether the testimony, of which the statement of Theodore Allen is a part, is true.

In order to do this, we must first see what weight of testimony is requisite to establish the alleged fact; then what can be learned from the probabilities independent of the testimony to be tested; then how far the evidence is corroborated directly, and thus we shall arrive at the value of the evidence and at the truth of the matter.

First. As to the force the testimony must have to produce conviction.

What is it that makes us require evidence of guilt? The presumption of innocence. What is that? It is faith or belief that the person is incapable of the crime.

Does that presumption still exist in this case? Does it continue in spite of the evidence as to matters distinct from the New Jersey affair?

What is the philosophy of the maxim, "*Falsus in uno, falsus in omnibus*?" Is it not simply, that after the absence of integrity is once established, no proof is necessary to establish it again? Apply that principle to the facts before us. Here is a man confessedly capable of deliberate and malicious falsehood; capable of violating the first principles of honor; capable of disregarding the cardinal virtue of his profession; capable of violating the professional and official obligations by which he is bound; capable of violating the privileges of Congress, and of aspersing his superior officers; capable of blackening private character from motives of revenge; capable of endeavoring to present evidence to substantiate allegations which he does not believe; capable of sitting down under proof against him utterly destructive of his character, which, if false, he could explode at once by his own testimony, and willing to assume the position that if compelled to testify it shall be with the understanding that he shall not be impeached or contradicted.

What presumption of innocence remains in such a case?

Second. What probabilities are there, independent of the evidence in question, from which we can judge of what is likely to be true?

The case abounds in evidence that General Fry had a most determined, and, indeed, violent feeling toward the people of my district, toward the provost

marshal, and especially against me. He was resolved to discipline us all with great severity. In addition to this, he was zealous and headlong in his partisanship of Haddock. Mr. Dana testifies that even as late as April 3 he stigmatized as corrupt all those who imputed blame to Haddock. Previous to the 18th of March General Fry knew that I had charged Haddock with the frauds which he (General Fry) was seeking to fasten upon Captain Crandall. He was, as the event has shown, intensely angered. His bridled emotion, described by Mr. Dana, proves this, and it appears in various ways that he had put himself upon destroying Crandall and sustaining Haddock.

With what we know now of the lengths to which General Fry's revenge will carry him, is it probable or improbable that he was at the time in question longing for some weapon to use against me? This is a very pregnant question in considering the naturalness or unnaturalness of Allen's story.

If General Fry was, at the time referred to, in quest of something which might aid him against me, was Theodore Allen a man whom he would have been likely to trust on such an errand? This also is an important question.

Who was Theodore Allen? He was a man of address, of nerve, of talent, and he knew men. He had been selected by Generals Baker and Fry as the shrewdest and aptest man who could be found in the city of New York, both for discoveries and concealments. It was in this character that General Fry knew him.

General Fry had once confided in him, so much as to put himself far into his power, and to show that he trusted him. Look for proof of this at the admitted facts of the Hoboken affair.

Moreover, Allen was largely in General Fry's power. Sixty-six thousand dollars, less the expenses, had already been realized from a very questionable transaction, to say the least, with which both were connected. Fifty-four thousand more depended on the favor or the exactions of General Fry. Moreover General Fry had the power to order his arrest at any moment, as he afterwards did when he found Allen had failed to gratify his revengeful intention to manufacture evidence. In these circumstances was Allen the man he would trust or not? General Fry's counsel says he never had seen him but twice, and he was too much of a stranger to be selected for such a purpose. Experience and human nature are opposed to this idea. It is not the rule for men in power to select those they have known long, and who have known them well, for employments which are awkward to talk about.

A second interview seems rather a nick of time for such a purpose.

It was at the second interview that Macbeth proposed Banquo's murder to the man he thought might do the work, and it happened also that he requested the attendants to leave the room.

Is it not even possible, I suggest to the counsel, that Allen may have plagiarized this and other examples, deemed true to nature by the great masters of the human heart?

At this point let me ask, What is the precise presumption left to be overcome by Allen's testimony? Is it the presumption that General Fry was incapable of making use of unfair means against a man he hated, or is it the presumption that General Fry would not have selected Theodore Allen?

Now, let us turn to Allen's testimony for a moment. What part of it stands alone?

Is he not corroborated in nearly every particular? Is he contradicted in any one particular?

I will speak only of the one point in his testimony most vital, and of course most contested in argument, to wit: The statement that General Fry proposed to him to go to Utica and find something, at all hazards, which would fasten imputation upon me, and that upon a compliance with this request, hinged the \$54,000.

Washington that day; *second*, that he had an interview with General Fry; *third*, that in that interview the subject of getting evidence at Utica was talked of; and *fourth*, that Allen undertook to *provide* information.

About this same time, indeed only the day before, we find General Fry, in another despatch to Colonel Baker, expressing his great anxiety to procure evidence from Utica, and mentioning in a hostile manner that I (Mr. Conkling) "deny Crandall's corruption." The committee cannot fail to see the coincidence here again between this despatch and Allen's testimony.

We find that Allen goes back to New York, and that after a disclosure by him to them of what had occurred, he and his confidential advisers are in daily consultation, until that consultation ends in sending a despatch to General Fry in Allen's name.

The committee is asked to examine this despatch, and see if it is explainable in any way except as Allen's testimony explains it. Why did he telegraph General Fry, "*I have just returned from Utica?*" If going to Utica had nothing to do with the \$54,000, it would have been very strange to put it in a despatch and pay for its going over the wires to General Fry. This would have been very strange, even if Allen had *in truth been to Utica*; but how much more strange it would be, when he had *not been to Utica*, to telegraph that he had been, if there was no connexion between going to Utica and getting an order for the \$54,000. Could anything be more speaking?

Why did Allen wait five days before sending this despatch if it was not to allow time to have gone to Utica?

Why did General Fry forthwith send back by telegraph an order for the \$54,000?

Why did General Fry on the next day telegraph Baker to commit the Utica matter to Allen?

When these things can be explained away, it will be time to inquire why Theodore Allen, without motive, unless his statement is true, should come here to confront a man in official station, who would have dared in return to confront him, but that "conscience does make cowards of us all."

In conclusion, I have only to say that whenever the committee shall be prepared to receive it, I shall be ready to point out evidence substantiating all statements made by me as to the administration of the bureau of General Fry.

MEMORANDUM OF LAW SUBMITTED IN CONNEXION WITH THE FOREGOING ARGUMENT.

General Fry has, by his counsel, submitted to the committee an elaborate argument to show that there is a technical impediment in the way of a representative elect conducting a criminal prosecution for the United States before a military court.

The position assumed is, that though applied to, and appealed to, by the government to render it professional service, though the occasion is such that no other citizen would be justified in refusing, and though special circumstances may render it important, as Mr. Stanton testifies was the case in this instance, that a particular person, rather than some other, should act, yet these considerations ought not to govern if the person thus applied to is a representative elect to Congress.

The suggestion is that such a professional employment constitutes "holding an office," and that by law there is an incompatibility in the case.

The counsel for General Fry virtually concedes that no statute upholds this view, and he rests his argument upon the Constitution.

It is submitted that this position is as unsound in law as it is in morals, patriotism, and common sense, and it is insisted that a representative elect is, in such a case, precisely in the same position, technically and substantially, as any other citizen.

It is believed that the legislation of the country can hardly involve such absurdities as would result from the doctrine expounded by General Fry.

It cannot be true that a lawyer, by being elected to Congress, thereby loses his right to practice his profession. Nor is it true that the government is under any disability which prevents its exercising the right of every other litigant to select the attorney or counsel who in the particular case is most likely to be useful. Nor is it true that though a representative or representative elect may properly act as counsel for any and every other client, he may not so act for his government. It may be asserted with some confidence that no such folly has been committed as to allow members of Congress to act as counsel *against* the government, as it is admitted by all they properly may, and at the same time to prohibit their acting *for* the government, or in its aid.

I.

The provision of the Constitution referred to (Sec. VI, of Art. I) has no application to the case. The language is, "no person holding an office under the United States shall be a member of either house during his continuance in office." For several reasons this language has no application to the facts before the committee. One reason will suffice, viz: that the act of prosecuting Haddock before a court-martial in no sense constituted "holding any office under the United States." If this be so, there is, of course, an end of the argument, and there would have been an end of it even if Haddock had been prosecuted, not by a representative elect, but by a representative after he had qualified as such.

1. The office of judge advocate exists, and is, of course, created by law. It is a well-defined office, as much so as the office of district attorney or marshal or collector of internal revenue. (See 12 Statutes at Large, p. 598; 2 Brightley's Digest, p. 25) A judge advocate can be appointed in only one way, (except the temporary appointment during vacation of the Senate,) viz: "by the President, by and with the advice and consent of the Senate." The President must nominate to the Senate, and the Senate must confirm, and then a commission issues to the appointee. (See same statute.) Judge advocates have the *rank, pay, and emoluments of a major of cavalry*. (See the same statute.) This gives a salary as well as military rank.

2. It need hardly be argued that no "*office under the United States*" can exist unless it is created by the Constitution or by act of Congress. It follows, then, that the office of judge advocate exists only under the statute already cited, because no other statute now exists and none other did exist in 1865 by which such an office is created, and it is not created by the Constitution. We know, therefore, exactly what the office of judge advocate is, and also its character, mode of appointment, tenure, and compensation. Is there any pretence that this office was conferred in the case before the committee? There was no nomination to the Senate, no appointment by the President, and no commission whatever.

3. But it is said the Haddock court-martial should have had a regular official judge advocate, and an argument is deduced from this that it did have one. The point was raised on the trial of Haddock that the law required an official judge advocate, duly appointed, &c. This point was overruled, and properly so, as all the statutes on the subject expressly authorize persons *not* judge advocates to act as such on trials, and Mr. Stanton testifies that during

his administration, in a majority of important military trials, the prosecution has been conducted, not by those holding the office of judge advocate, but by counsel employed for the particular trial.

4. It is still further suggested, however, that whoever is assigned to act as judge advocate, and does act as a judge advocate, would, if he were present, thereby actually become "judge advocate," and hold an "office." This would seem a violent assumption, even if it depended upon general reasoning; but, in addition to this, several acts of Congress preclude the idea altogether.

a. Several acts of Congress provide that no man shall enter upon any office without taking an official oath. This is universal, and the oath is prescribed in so many words. Recent statutes prescribe an additional oath of office, without taking which no man can hold an office.

Does any statute require these oaths to be taken by one who merely appears to try a criminal before a military court? Are these oaths, in fact, taken by one who merely thus appears? Was any such oath taken in the case in hand?

Every "judge advocate" must take, and does take, these oaths before he can become "judge advocate," but he does not take them because he appears, nor when he appears, before a military court.

No official oath is taken by anybody in organizing a military court. The "judge advocate," if there is one, if not, the person officiating for him, the stenographer, and the members of the court, all swear not to disclose the proceedings, &c., but will any one pretend that in thus swearing they all install themselves in "office?"

b. The statutes regulating courts-martial (see act of 1806, 1 Brightley's Dig., 80) leave no room for argument as to the effect and nature of the oath prescribed as a part of the proceedings. The provision is as follows: "The judge advocate, or person officiating as such," shall take the following oath: (The oath is simply not to disclose the proceedings improperly.)

This is the only oath required, and it is to be taken as much by a judge advocate as by a counsellor who casually acts, and so *vice versa*.

Is this an oath of office? If so, what is the sense of its being administered to judge advocates who have already taken the oath of office?

Do those who take this oath thereby take upon themselves an office? If so, the judge advocate, and all the members of the court, would necessarily acquire each a second office, because all the members of the court take the same oath substantially. The statement of the proposition shows its absurdity. The oath is of the same nature as that taken by a grand juror, and no more constitutes swearing into office than does the oath taken by Odd-Fellows, or Masons, or members of any other body, whether established by law or not, whose doings are private.

c. It is suggested that the order assembling the court-martial, and naming those who compose it, confers an appointment to office, or constitutes an appointment to office. This idea can be so readily tested that argument cannot be necessary.

In the first place, courts-martial are not ordered by the authority which alone has the appointing power, and for that reason, if for no other, an appointment could not be conferred in the manner suggested. But suppose this were otherwise; suppose the power of appointment to office to reside in the same hand which writes the order for a court-martial, would those mentioned in the order thereby receive appointments to office? If this were so, as Mr. Stanton explained, a *maximum* court-martial could not be detailed without making thirteen men hold two offices each, one a military commission of rank as high at least as the rank of the accused, and the other the office of member of the court. If the insertion in the order of the person who is to act as judge advocate is an appointment to office, he, too, if a military man, would become the incumbent of two offices. It will be seen that no court-martial could legally

exist, if the effect of the order detailing its members was as suggested ; it would be illegal to order a court at all.

d. It is said, again, that administering the oath to the witnesses implies official position. The difficulty here is that the act of Congress provides othorwise, by providing that the witnesses may be sworn by a judge advocate or "*other person*" who acts as judge advocate.

A foreman of a grand jury is empowered by the statutes of many States to swear witnesses ; but d'd any one ever hear that by doing so he acquired or became invested with an office ? The foreman of a grand jury is appointed by the court. If he holds an "office" in the State of New York, at least, there could be no foreman of a grand jury, because the Constitution provides that no power to appoint to office shall reside in a court.

So as to summoning witnesses, the statute provides that the summons shall be made out by the person acting as judge advocate, just as attorneys issue subpoenas and other writs ; but does this clothe any one with an "office ?"

II.

Reference has been made to section 46 of the civil and diplomatic bill of 1852 as if that section and other like statutes had some bearing on the question before us. This section is as follows :

"No person hereafter who holds or shall hold any office under the government of the United States whose salary or annual compensation shall amount to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office."

Those familiar with the object and history and settled construction of this and similar provisions, will be puzzled to understand how it can be supposed to have any application to the matter before the committee. The counsel for General Fry frankly states that in his opinion it has no relation to the case, but it is referred to because it was read in the House by the member who connived with General Fry in introducing into the House his libellous letter, or who invoked General Fry's aid in a controversy begun by himself.

1. A representative in Congress is not at all within the words, "*person who holds an office under the government of the United States.*" Senators and Representatives do not hold offices *under the government of the United States*. They are part of the government, and therefore are not affected one way or the other by these provisions. (Blount's Trial, U. S. Senate, pp. 22, 102 ; Wharton's State Trials, pp. 260, 316 ; 1 Story on the Constitution, §§ 793, 802 ; Am. Ins. Co. *vs.* Canter, 1 Peters, 511.)

a. Besides, one who, though he has been elected to Congress, has not qualified, holds no office whatever ; so that if the position of senator or representative were an "office under the government," even then the present case would not be reached by the statutes in question.

2. Although no such suggestion has been made, let us see whether the provision in question might not be made to apply to the case so far as it would apply if it means that one holding the office of judge advocate could not at the same time be representative elect, and afterwards qualify and receive his salary. We shall see the fallacy of such a construction presently ; but let us suppose that the provision applies to the case of one person holding two offices, one of the offices being that of representative elect. Where then shall we land in this case ?

a. We are brought up at once by the fact that prosecuting Haddock, just as a judge advocate would have done, does not in any sense constitute holding an "office."

b. But, again, not only is it a fatal trouble with the argument that there was no "office," but the further difficulty must be met that there was no office with "a

salary or annual compensation" of twenty-five hundred dollars, or any sum whatever.

Mr. Stanton made an allowance dependent wholly upon the value of the particular service, and graduated in no other way.

3. The greatest difficulty, however, with this and all similar provisions is, that they have no application to any case of two offices actually held at the same time by the same person.

These sections were all enacted to meet an entirely different contingency; and so far as regards any inhibition *they* contain, one person might at once hold all the offices known to the Constitution, from the presidency down. These provisions hit the case of two offices held by separate persons, each drawing pay, and one doing the duties and drawing the pay not only of his own office, *but of the other office also*, while at the same time the incumbent of the second office receives his salary, or is entitled to it. The statute therefore cannot apply to *two offices actually held by the same person*. (Converse *vs.* The United States, 21 How., 463; United States *vs.* Austin (U. S. cir't ct.,) Mss. opinions of Cushing, Att'y Gen'l, vol. 8 of Att'y Gen'l's Op'ns, 325; also opinion of Att'y Gen'l, January 14, 1863; case of General Riley, just decided in Court of Claims; opinion of Bates, Att'y Gen'l, in case of a coroner of District of Columbia.)

III.

Some of the newspaper counsel of General Fry have suggested that, failing in the theory that the act of prosecuting Haddock constituted holding an office, it might be turned into a "contract" with the government, and in that way be made to catch upon a technicality.

The act of 1808 has been cited, and the modest suggestion has been published in a newspaper that the Secretary of War had made a "contract" to have Haddock prosecuted by a representative elect, and for so doing was to be "deemed and taken to be guilty of a high misdemeanor, and be fined in a sum of three thousand dollars!" Those who published this, in the hope of influencing the public or the committee, have, it is submitted, more need to know their place than to know the law; and though it may not be necessary, one or two comments are suggested:

1. The essence of a contract is, that it binds at least two parties. Unless it does this, it does not exist. Did the letter of April 3 constitute any such contract? If the person requested to prosecute Haddock had at any time been unable or unwilling to do so, and the government had thereby suffered loss or inconvenience, could an action for damages have been sustained on the letter of April 3, whether the person so refusing was a member of Congress or not? On the other hand, supposing the government suable like a private party, could an action have been maintained on the letter of April 3, had there been a refusal to allow the party to continue his services?

2. Mr. Stanton and Mr. Dana both testify that no "contract" whatever was made. There was only a request by the Secretary of War, and a written authority to execute that request. The fact that after the service had been rendered the Secretary made a reasonable allowance for it in no way aids the idea that there was any contract.

3. It is no doubt true that a contract might be made between the government and an individual, by which he would be bound on stipulated terms to render professional services, and such a contract might be brought within the letter of the statute, foreign as it would be to its spirit. However that might be, there is no such case here.

4. In this case, moreover, the person was not a member of Congress at the time. The transaction was eight months before he took his seat or qualified as a member of Congress, and for this reason the statute in question has no relation to the case.

MR. RIDDLE'S REPLY.

MR. CHAIRMAN AND GENTLEMEN: In availing myself of your permission to reply to the elaborately-prepared summing up of Mr. Conkling, it is my purpose to examine with care only the matter brought to your notice through Theodore Allen's testimony—the famous raid of General Baker upon the bounty-jumpers of New York city in March, 1865. I reserved my remarks upon this till my reply, for clearly in the onset made upon General Fry from this point the affirmative is with Mr. Conkling.

When he reached that point in his argument, however, he paused, and insisted that I should then offer my views upon it, in advance of his own. I consented, and had but opened out the subject, and my remarks not meeting the approbation of that gentleman, which I regret, he stopped me, and insisted that I should desist and permit him to finish; and now, at a little after 10 p. m., after the labor of my own and the gentleman's entire summing up, I am to submit the only reply I can be permitted to make.

The remarks of Mr. Conkling, down to Allen and the raid, present nothing that we have not, in various forms, heard from day to day for the last two months. The same old epithets, insinuations, and sarcasms; no paragraph, point, or sentence that is not coupled to General Fry with a verbal link of obloquy or infamy.

It was amusing that he should have paused in his reading to plaintively complain that I should have commented upon the law of his double compensation, and he is disposed to regard that as an indication of General Fry's personal unkindness towards him. After the flood of rancor with which he has sought to sweep General Fry away, I do not feel called upon to apologize for any want of charity, if that want exists, on the part of General Fry towards him. But it certainly was not manifested in any remark of mine towards Mr. Conkling in the whole of my summing up.

And what purpose had the gentleman to serve in repeating a score of times, and with more variations, that "General Fry would not submit himself to a cross-examination; dared not submit himself to a cross-examination; could not be driven to it," &c. Does he not remember that your record shows that General Fry never opened his mouth as a witness? Was never examined in chief? That my own position always was, that we were not here as suitors, or prosecutors, or defendants; that it was the investigation of the House, and that for every purpose General Fry was entirely at the disposition of the committee as a witness; and that its slightest intimation would have put him on the stand; that the gentleman might call him and put to him any form of interrogatory allowable in the examination of an adverse party? Did not the committee solemnly rule that General Fry could not be cross examined, as he had never been examined in chief, but that if Mr. Conkling called him as a witness, they would allow any latitude of examination? and yet "he did not submit to cross-examination, and because he dare not"—dared not face the gentleman. This chronic self-assertion has become intolerable. The gentleman comes in and overwhelms us all with a rotund aggressive consequence that abolishes us. He absorbs all the atmosphere, and we have to draw our very breaths through the cracks and crevices in the walls.

After closing his manuscript, the gentleman ingenuously informs you that his assault upon General Fry's bureau is no possible impeachment of the administration of the Secretary of War, because the testimony will disclose that Mr. Stanton had not the slightest intimation of the Provost Marshal General's doings, and that the gravest matters are yet to be produced. Let them come, and at once.

I say to you, gentlemen, it will be a rehash of the pretended complicity with Haddock, with no new evidence, a reproduction of the New York-Hoboken bounty-jumper raid; with Theodore Allen for hero, and principal witness.

The committee ruled that they would in no way now investigate the charges of Mr. Conkling against General Fry, except so far as that might be necessary to show the motive of General Fry in writing the Blaine letter, and for that sole purpose. Under this rule, I only glanced at the pretended complicity of General Fry with Major Haddock, which covers so many of the dreary pages just read, nor will I now return to that subject. Nor is it my purpose to discuss with much breadth the bounty-jumping raid, further than to bring distinctly out the daring and desperate attempt to affix infamy upon the name of General Fry with the drule of such a wretch as Theodore Allen.

The gentleman has sought to sustain Allen, with portions of the official correspondence, orders, &c., of General Fry and his subordinates, pertaining to the Hoboken campaign. And we have produced the balance, that there may be completeness in that respect. If the gentleman supposes that by the use of the creature Allen, brought in by the fostering hands of the very man whom he here swore he once sold himself to assassinate morally, that he could thereby induce or compel us to put General Fry, General Baker, and their subordinates, on the stand, and thereby in this collateral way develop the defence that we hope to be called upon speedily to make, he was mistaken. He shall hear enough of Hoboken in its place, and of Major Haddock, and of some other things.

If by withholding this evidence at this time we have underestimated the importance of Allen and his story, and have thereby lost an opportunity to remove an injurious impression, the temporary consequences must be endured by General Fry.

It is to be remembered also that, to a gentleman of General Fry's habit of thought, the idea of thrusting himself forward to exonerate himself by his own testimony from the aspersion of Allen was particularly repugnant.

We are told that in the course of General Baker's campaign at Hoboken and New York there arose an item of \$54,000, and that that was made the purchase price paid by General Fry to Theodore Allen to produce "at all hazards" evidence that should connect Mr. Conkling with the Utica enlistment frauds, which, if true, proves conclusively that General Fry could at that time have had but an imperfect idea of that gentleman's real value.

I will not follow Mr. Conkling in his intensely laborious discussion of the events, out of which that alleged corruption fund arose. He finds no good in any part of it, and holds General Fry culpably responsible for the whole. The scheme was devised and executed by General Baker. It was fully approved by General Fry, who gave, and procured to be given, the orders by which it was carried out, and he now and at all times admits his full responsibility for his course in it.

The recruiting frauds in New York city, and its neighborhood, had grown to gigantic proportions. Millions were squandered, huge credits were obtained, and yet but here and there a solitary man was produced for the front. The quotas were filled with figures, and shadows and phantoms. General Grant's army was wasting, and General Dix with his whole military police and the metropolitan police were utterly powerless to stay or check this "carnival of fraud." In this "paradise of thieves" Mr. Conkling's hero, Allen, was a principal, as he says himself, and there is a memorial from him and his partners in evidence setting forth and proving, that prior to the invasion of General Baker, they made \$5,000 per day as bounty brokers, and that for twelve consecutive days their profits were over \$60,000. I commend that paper to the committee for various purposes. These enormous frauds were in full tide when Baker, at the instance of General Fry, was launched against them. The campaign was brief but decisive, and resulted in the utter extermination of the whole obscene brood; and when I hear a man condemn the means used, I am inclined to suspect that he dislikes the results.

The proceeding had for its objects the gathering together at one time and

place the greatest possible number of this thieving, trading, deserting host, jumpers and brokers, and then to sweep them clean into prison. For this purpose one of the chief requisitions was to secure one of their acknowledged leaders, a very autocrat, superior to the low maxim that ascribes honor to thieves, to betray and deliver them over. All the needed qualities were found in plethora in Theodore Allen, who after this moral and patriotic service, after having run out of the country, and having run the gauntlet of the penitentiaries, ran naturally enough into the service of Mr. Conkling.

Allen, in the memorial referred to, says he was induced to do this by two "considerations, to wit: the public good and our personal gain." And when it is remembered that his firm were then making \$5,000 per day, and that they knew that General Baker was on their track, we understand what this "personal gain" was.

Having secured Allen, a recruiting station was established at Hoboken. Colonel Ilges, of the regular army, was detailed as mustering officer, and Allen & Co. commenced roping in their friends. Nothing can exceed the gusto with which he described this labor of love. Men were recruited, paid bounties, and the jumpers permitted to escape. The honest recruits—and a very few seem to have been found, even in the neighborhood of New York—were sent to the front, and Allen & Co. were trading and speculating in the credits and laying plans to "beat General Fry." The great day, March 10th, arrived, the trap imperfectly sprung, but it enclosed 183 jumpers, pure and simple.

In order to insure the free working of the process, it was necessary that all the recruits mustered in by Colonel Ilges up to the last day should be credited, including jumpers. It is perfectly obvious that it was not intended that the spoils of the last day were to be so treated; for, as everybody knew, the sole object was to secure the arrest of the jumpers, and that their enlistment was a mere fiction. General Baker so understood this, as did Ilges undoubtedly, and such was most clearly the understanding of General Fry, and no man knew this better than did Allen. He swears that in his conversation with General Fry, on the 28th of February, there was nothing said about what was to be done with the last day's recruits, but he knew that they were to be treated as criminals, and not as soldiers. When my Brother Hotchkiss asked him if Mayor Cleveland knew, when he purchased the credits for the 183, that they were jumpers, he declines to answer. But it is said that General Fry, on the 5th of March, issued an order that credits should be allowed for such men as Colonel Ilges should *certify* were enlisted by him. This does not change or settle anything, for nobody supposed that Colonel Ilges would certify that he had enlisted these 183 bounty jumpers. Colonel Ilges, who seems unaccountably to have made a grave mistake, under which he groans through the dozen pages of his report, put in evidence, says the men were all arrested, and he hesitated about the credits, all of the 11th, 12th, and 13th, and that finally Mayor Cleveland, who had bought the credits of Allen & Co., told him that Colonel Baker said that if Colonel Ilges made the credits it would be all right, and that he made them. We know perfectly well that Colonel Baker said no such thing; nor did he in any way consent to these credits, and that he always opposed them. In proof of which, I beg to reproduce General Baker's letter:

OFFICE SPECIAL AGENCY WAR DEPARTMENT,
New York, March 16, 1865.

SIR: Since the capture of the bounty jumpers at Hoboken, repeated applications have been made to me to have said jumpers credited to the State of New Jersey. Colonel Ilges, the mustering officer, applied to me before going to Washington last week to make application to you to have said jumpers so credited. I informed him that I did not think these men could or would be credited,

advising him (Colonel Ilges) to apply to you for the required instructions or permission.

On Tuesday last, while in Washington, and after my conversation with you on the subject referred to above, I received a telegram from Colonel Ilges, requesting me to obtain permission to make these credits. This telegram I made no reply to. On my return to New York yesterday morning I heard that Colonel Ilges had made the credits. I sent for him and asked him by whose order or direction he had done so. He referred me to your telegram of March 5, addressed to Captain H. J. Mills, provost marshal at Newark, New Jersey, for his authority. I informed him (Colonel Ilges) that I did not think that you intended by the telegram referred to, to convey any order or authority to Captain Mills to credit bounty jumpers and deserters; that your telegram was intended to only authorize the crediting of such men as were regularly and legitimately enlisted previous to the Friday on which it was understood that none but jumpers and deserters were to be enlisted. I have advised Colonel Ilges to go to Washington to-night and to make such explanations in reference to this matter as you may require. These explanations I trust will be satisfactory.

I am, general, very respectfully yours,

L. C. BAKER,

Colonel and Special Agent War Department.

Brig. Gen. JAMES B. FRY,

Provost Marshal General U. S., Washington, D. C.

A true copy:

GEO. E. SCOTT,

Brevet Lieutenant Colonel U. S. Volunteers.

March the 16th was Thursday, and the Tuesday referred to was the 14th. General Baker it seems was then in Washington, which was the first that General Fry heard of the transaction, and he must have taken the same view of it that Baker did. It appears that General Baker reached New York the 15th, and found that Ilges had made the credits, and without awaiting instructions from General Fry. This letter also settles the construction of the order of the Provost Marshal General of March 5th, as not authorizing credits for the jumpers.

Colonel Ilges's report further states that when he allowed the credits for these 183, he required a deposit of \$300 for each of them, and that there was paid him the sum of \$54,000, by Allen & Co., for that purpose. This was under an order of the Adjutant General, and governed recruiting for the regular army.

Allen says that when the money was being paid over by Mayor Cleveland, Colonel Ilges took it in transit. It is to be borne in mind that the transaction between Allen and Mayor Cleveland was wholly between them, with which General Fry and General Baker had not the least to do.

Ilges says that he was in Washington March 17th, to ask instructions, but does not say what he told General Fry on the occasion; nor does it appear that General Fry then knew who had advanced the money to Allen & Co.; nor does it appear that he knew that until some days later, on the 17th, he promised to give Colonel Ilges further orders.

On the 19th he issued an order to Colonel Ilges disallowing the credits, and directing him to return the money *to the parties who advanced it*. It seems difficult to question the propriety of this order. Clearly these deserters should not have been credited; if not, the money should be refunded. It was made up of local bounty. It could not be held for the deserters, nor could the government in any way have acquired the slightest claim to it, and Colonel Ilges only held it as a trustee for whoever advanced it. Who that party was General Fry did not assume to determine.

Colonel Ilges did know, and if the money was really advanced by Jersey

City, it should have been paid to it. That alone would have been a compliance with the order. In doubt, Colonel Ilges wrote on the 21st to General Fry to know whether the money should be paid to Allen & Co., or to the cities that advanced it, without naming them, and without intimating that anybody but Allen & Co. claimed the money, and when subsequently the order to refund was repeated through General Baker, he paid it to Allen & Co. Some time near the 29th of March Mayor Cleveland, for Jersey City, brought the whole matter to the notice of General Fry, who wrote as follows to General Baker:

WAR DEPARTMENT, PROVOST MARSHAL GENERAL'S BUREAU,
Washington, D. C., March 29, 1865.

COLONEL: By the course of things in reference to bounty-jumpers taken at Hoboken, Mayor Cleveland, of Newark, is placed in a very unfortunate position. If possible he should be relieved from it. Under date of March 23, I directed Colonel Ilges to return the money in his possession to the parties who advanced it as bounties for these men, the credits for them being disallowed, and the money still in his possession. It seems that under this order, reported by telegraph to you on the 24th of March, Colonel Ilges has delivered the money in whole or part to Theodore Allen, broker, and perhaps to some other brokers, and that Mayor Cleveland is unable to regain possession of it.

The proper method of disposing of this business has all the time seemed to me plain enough; it is this: to allow *no* credits for the bounty-jumpers, men who have already been enlisted and credited several times over, but to credit any, if there be any, who are *bona fide* recruits and not jumpers. To return to the town authorities all the money they advanced on account of men whom we do not credit.

I intended my order to carry out the above views, but it seems that the money advanced by Newark has been returned to Allen, the broker; perhaps it was turned over to Colonel Ilges, through Allen, and on this account he returns it in the same way. However that may be, Allen should return the money to Newark, and I desire you to see Allen and tell him so. Neither he nor any one else has any right to profit in the matter. All necessary expenses connected with the arrest of these jumpers, and the enlistment of such as are proper recruits, must be paid by the United States, so that there is no loss for individuals in the case.

Please report to me as soon as practicable on the adjustment of this affair. You had better send for Mayor Cleveland also.

Very, respectfully, your obedient servant,

JAMES B. FRY,
Provost Marshal General.

Colonel L. C. BAKER,
No. 12 Vesey Street, New York City.

A true copy:

GEORGE E. SCOTT,
Brevet Lieut. Colonel U. S. Vols.

Obviously this was the first time, amid the vast multiplicity and complexity of his affairs, that General Fry found time to master the whole ground; and then, as appears, his knowledge of details was imperfect, as his letter shows. As Allen & Co. were in some sort in the employ of General Fry's bureau, he at once promptly undertook to set matters right, and ordered Allen to refund not merely the \$54,000, but \$126,000, the whole sum paid him on account of those bounty-jumpers. On a refusal to pay, General Fry, on the 6th of April, as in proof, ordered the arrest of Allen and his partners, and this they eluded by flight to Canada.

How is it possible, on this structure of facts, to implicate General Fry in culpable omission of duty, in reference to the credits, or the \$54,000?

Thus, gentlemen, the existence and disposition of the funds referred to is distinctly brought to your notice, and I have to ask a few moments for the ungrateful subject of Allen and his story.

I pass his associate Mulloy, whose gushing "sense of justice," according to his own story, led him to seek out Mr. Conkling and disclose the existence of Allen, and his story to him, of his volunteering to go and fish Allen out of the slums of New York, and his bringing him to Mr. Conkling's presence in Washington, he has made you familiar himself.

Allen says that the first he knew of himself he was in a butcher's shop, which is an honest enough place, as the meat-market rules; that he then succeeded to a cart and the streets; from these improving opportunities, he served in a dining-room. This fitted him properly to run a drinking saloon. From this drinking hole, he graduated to a gambling hell. Thence by "due course of law" he was transferred to Fort Lafayette, from which he emerged a full-blown bounty-jumper broker. We also know by the record, not in, but at the door of this case, that he enjoyed the further advantage of serving a term, on conviction, for pocket-picking. This, with his subsequently acquired accomplishments, eminently qualified him for his labors in this case. It is idle to talk of the formal impeachment of such a man, and more useless to sustain him. In the presence of habitual crimes, men don't care to know whether, apart from them, he has any reputation for truth and veracity or not. Indeed, that would never be named unless it was very bad. Engendered in the teeming gutters of a great city, as maggots are in effete animal matter, he is scarcely responsible for a want of moral sense; and it is not his fault that he was produced here.

He says that not having much confidence in General Baker, and such chaps never have had, he came on to Washington, about the 28th of February to see General Fry. That in his interview with that officer it was agreed that all the jumpers should be credited, and be permitted to pocket the money. That about the 18th of March he came on again, but whether on an invitation from General Fry, through General Baker, or addressed to him directly, he can't tell. That General Fry received him blandly, and inquired about the money. That he told General Fry that Ilges had it, and would not give it up, and he wanted an order compelling him to do so. That General Fry said he would see about it, and that he, General Fry, wanted to know what he, Allen, knew about Utica, &c.? Allen knew all about it. Could he go there? Yes. And then General Fry, with the persuasion of his arms about Allen's neck, opened up his trouble with Roscoe Conkling, and told him that if he would go to Utica and find evidence that would connect Conkling with frauds there "at all hazards," he (General Fry) would issue an order while he was gone to pay the \$54,000 to him and his associates. He leaves us to understand that he assented to this virtuous proposition, and thereupon he returned to New York. That Ilges did not obey the order of the 19th, and that he and his associates got up and sent in his name a despatch to General Fry on the 24th to that effect, and added that he (Allen) had been to Utica, which was false, and that thereupon, through General Baker, came the order on which Ilges did pay the money to them.

Do you believe one word of this stuff? "Why," exclaims the gentleman, "see what a marvellous corroboration! Not merely a series of striking coincidences, but corroborations. Was he not in Washington on the 18th, as shown by General Fry's own telegram, which states that Allen is nowhere? And on the next day General Fry made an order to pay over the money, and afterwards, when he heard from Allen on the 24th that the order was not executed, it was repeated through General Baker."

All very true. These are all independent facts, parcel of other transactions, having no necessary connexion with Allen's story of his temptation and fall.

Is the story itself corroborated? He would, of course, use some corner or cranny of an actual transaction in which to deposit his excrement.

It is most important to this story that Allen was invited to Washington by General Fry. Is he corroborated in that? Where is the telegram or letter? Did not Mr. Conkling have an order from the Secretary of War placing every line and note of the whole correspondence in his hands for this investigation? Yet no indication of such an invitation is produced, and our own researches in the same direction were also fruitless. There never was such an invitation. Allen doubtless went on his own hook, and probably to see what the indications would be as to the money. General Fry promised Colonel Ilges on the 17th to issue an order for his direction in the premises, pursuant to which the order of the 19th was promulgated; and this order was to return the money to the party *who advanced it*, and leaving that to the determination of Colonel Ilges, so that it was altogether uncertain whether Allen would get it. When informed by Allen's telegram of the 24th that it was not executed, he informed General Baker that Allen so said, and directing him that if Allen's statement was true, to himself see that the order was carried out. Allen's name occurs, as would that of any other informant. That the Utica frauds were talked over on the 18th between Allen and General Fry is certain; but outside of Allen there is not a word of proof that General Fry wanted evidence against Conkling of any sort.

Allen says that at his first interview it was agreed that all deserters should be credited; but he does not pretend that in his second he made this claim and insisted that General Fry should execute it and allow the credits, and so confirm the money in his hands; nor did he ever claim to anybody that such was the agreement; nor did Mayor Cleveland or anybody else ever claim that there was such an agreement; nor were the credits finally allowed by the Secretary of War on any such ground. So Allen also swears that General Baker, about the last of March, demanded the return of the whole \$126,000, which he refused. Did he say he refused it on the ground that General Fry had on the 18th of March agreed that the money should be his? Not a word of it. Did he ever make such a claim? Even in the memorial already referred to does he in any way intimate to General Fry that he had promised him this money? Would he not have said, "I also beg to remind General Fry that in my interview with him on the 18th of March he desired my services to investigate certain matters at Utica, and he assured me that if I would undertake it he would make an order to return me this money." Assuredly something of this would have been there inserted had there been a possible foundation in truth for it. And, besides, if General Fry had bargained for Allen's services, why hunt him from the county where he most needed them, and make a foe of the man in whose power he had put himself?

But what possible motive can Allen have to furnish this evidence against General Fry? asks Mr. Conkling. What motive? How can I tell? The gentleman says that General Fry found a motive to induce Allen to furnish evidence against him, (Conkling,) and he is now using Allen to furnish proof against General Fry, and wonders what possible motive could have been found for it.

Gentlemen, when Allen refused to restore the money General Fry ordered him to be arrested and deposited in the Old Capitol, and Allen and his friends had to flee from the country to avoid arrest, and he returned after months the malignant foe of General Fry. There is a motive. But he never had the hardihood to utter a lisp of this absurd lie till he found a friend and a backer. Thus unsupported, even by his own subsequent conduct or statements, what credit is due to a story which, if true, stamps its author as base to outlawry?

A few words, gentlemen, as to the alleged part of General Fry in this probable transaction. What conceivable motive could there have existed in his mind to enter into a conspiracy against Mr. Conkling? Allen says that General Fry complained that Conkling was setting himself up against him, General Fry, as the champion of Crandall. What stuff! Crandall was not suspended until the 13th, and the 13th was the date of Mr. Conkling's first mild expostulatory letter in his behalf. His offensive letter was not written until the 29th. General Fry could have had no feeling against Conkling on the 18th, nor did he ever express the least feeling against Crandall himself. There was no shadow of motive for this extraordinary conduct; and if he could have been capable of such depravity, it is incredible that he should have selected such an instrument, a creature wholly unknown to him, of whose power to serve him he was utterly ignorant, and of whose fidelity he could have no assurance. But you are asked to believe that, in his second interview with Allen, this educated officer, at the head of one of the principal bureaus of the military service, put his arms about Allen's neck, and in the broadest way and the freest words proposed to give him \$54,000 to ruin the reputation of Roscoe Conkling, whom he had never seen, and against whom he had no cause for dislike even, and who was also unknown to Allen. And more absurd still, he promises to pay this enormous sum on the mere implied assent of Allen to try to do this work. What under the heavens must be thought of General Fry? He must have had this thing much at heart to pay \$54,000 for it. Did he know what he was about? Then would he not have required the job to have been performed before payment? But no; he does not require performance, nor even an attempt to perform, nor any guarantee that the attempt shall be ever made; but as soon as Allen leaves Washington, without inquiring whether he has even started for Utica, and without naming a day when he shall go, he made the order to Colonel Ilges to refund the money, and dismissed the matter from his mind forever; for even Allen does not pretend that General Fry ever afterwards so much as asked if he had even been to Utica. Strange that mortal man could have paid such an awful price, not merely \$54,000, but his heart and soul, reputation and existence; all absurdly pitched into the hands of this Allen for this one thing, and never, never thereafter, make even an inquiry in reference to the so-coveted object.

Can absurdity go further than this story does? And credulity must perish in the vain effort to credit it.

If General Fry must do this thing, why not so do it as to avoid disturbing subjects that might afterwards open up a dangerous inquiry? Why not, for instance, instead of ordering the \$54,000 to be refunded, make an order allowing the credits, and thus at once and forever end the whole thing, and especially so, if he had ever promised to allow them?

The fact that the Secretary of War did afterwards allow them, shows that General Fry might have made such an order, and it would have received the sanction of his chief.

Here, gentlemen, I leave this matter. We produced the confidential clerk of General Fry to show that no such thing as described by Allen could have taken place. He wrote the telegram of the 18th, stating "that Allen is now here," which proves that he was present. Mr. DeCourcy was never sent out of the room. He did not identify Allen, for when he arrived Allen, contrary to promise, was not here to be identified.

So, too, we were at the gratuitous labor of impeaching Allen, which we fairly did, to the full measure of the books, by four most credible gentlemen, three of whom hold high official positions in the metropolitan police of New York city, and the fourth is secretary to the President. It is true the gentleman sustained him by five or six witnesses, instead of by "the New York directory," as he boastfully announced he would do. But it is useless; Allen is impeached in every way known in human tribunals and in human estimation. The truth of

his tale would render him infamous. He would be an accomplice without corroboration, and contradicted by every probability and fact connected with that matter; he is unsustained by his own subsequent conduct and declarations; he is impeached by his career in life, and finally by men familiar with that career; and I leave him and his story, thus beaten out of the semblance of human testimony in the keeping of his employer, and you, and the House of American Representatives, and the American public, shall judge of the character, credit, and honor that wait upon the production of his evidence in this investigation.

With many thanks for the uniform consideration extended to my associate and myself by your committee, and the enduring patience with which you have received this summing up, the subject of these labors is committed to your hands.

REPORT.

The Committee on Manufactures have had under consideration a report from the Hon. John C. Calhoun, Secretary of the Treasury, in relation to the subject of the tariff on manufactures. The report is a long and able one, and contains many valuable suggestions. The Committee have the honor to acknowledge the great services rendered by the Secretary in this respect, and to express their regret that he was not able to present a more complete report. The report is divided into two parts, the first of which contains a general statement of the condition of the manufacturing industry of the country, and the second part contains a detailed statement of the condition of the various branches of the industry.

The Secretary states that the manufacturing industry of the country is in a state of rapid growth, and that the demand for manufactured goods is increasing rapidly. He also states that the cost of production is increasing, and that the price of goods is consequently rising. He suggests that the tariff should be increased in order to protect the industry from foreign competition.

The Secretary also discusses the question of the tariff on raw materials, and suggests that it should be reduced in order to encourage the manufacturing industry. He also discusses the question of the tariff on foreign goods, and suggests that it should be increased in order to protect the domestic industry.

The Secretary concludes his report by stating that the manufacturing industry of the country is in a state of rapid growth, and that the demand for manufactured goods is increasing rapidly. He suggests that the tariff should be increased in order to protect the industry from foreign competition.

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MANUFACTURES.

JULY 17, 1866.—Laid on the table and ordered to be printed.

Mr. MOORHEAD, from the Committee on Manufactures, made the following

REPORT.

The Committee on Manufactures have had under consideration sundry memorials and bills referring to the great questions involved in the proper relations of the labor of the country to its interests and prosperity, and are deeply impressed with, on the one hand, the claims of the laboring men who throng the factories of the land upon the justice of the people; and upon the other, the duty, as well as policy, of so legislating that this "bone and sinew" of the nation shall not be thrown out of employment, and made to feel the ingratitude of their country. These memorialists represent the influences which are affecting their interests unfavorably, of which these three propositions are a summary:

"1. The decline of gold has already lost to us the protection of that 'accidental tariff' which its high price gave, and its continued decline to par must inevitably be followed either by a ruinous reduction of our wages or the closing of the manufacturing establishments in which we are employed.

"2. The amount of internal revenue tax upon the products of our labor counterbalances, in a great many cases, the customs duties on similar products imported from abroad, and, on some of the most important, operates as a premium to importation. This disproportion between excise and customs is a discrimination against our labor, which will be fatal to it if not corrected.

"3. The present tariff is not sufficient to give us equality with the English in the competition for the possession of our markets. With their mammoth accumulation of manufacturing wealth; the low rate of interest at which they can command immense sums of money; their absolute control of cheap labor; their abundance of machinery, coal, and iron ore, and the complete freedom of their manufactures from taxation, they are an overmatch for us in many of the most important industries, and can at will depress our wages or throw us out of employment."

And they ask Congress "to avert from us and our wives and children the misfortunes with which we are threatened, by amending the tariff so as to protect our labor to the extent of the difference of the cost of capital and labor here and abroad, with the addition of the taxes paid by American industrial products, from which the foreign are free."

No proposition seems plainer than that the duties of Congress are to its own constituents, rather than to men who reside outside our territory, who are generally inimical to our institutions, whose interests are sought to be promoted at the expense of our own people, and whose complete success inevitably involves our commercial and financial overthrow. That these results would follow the destruction of those protective barriers hitherto erected by the skill and industry of the American people, is too plainly written in the financial history of the world to admit of any doubt. The commercial supremacy of any nation necessarily presupposes the comparative subordination of others. England and

certain of the continental nations are eagerly striving to preserve the pre-eminence already attained, and to make it permanently secure by the humiliation of the United States, the only formidable rival left. Our past policy has too often aided their schemes ; and but for the periodic political revolutions which, for brief intervals, reversed the prevailing policy and called forth to their just activity the dormant energies of the nation, there is no room for doubt that the recent rebellion would have found the loyal States as little prepared for self-sustaining power as were the disloyal ; and that the markets of our enemies abroad would have been the only sources of supply for those necessities, without which the prosecution of the war for the preservation of the nation would have been an impossibility. The American people should not forget the danger they escaped, nor the narrowness of the escape ; their salvation, under God, is due to the great fact, that besides the patriotic spirit and noble daring and sublime self-sacrifice which animated the people, it was within our power, as a direct result of so much of the protective policy as had been embodied in our legislation, so to apply our own resources of skilled labor, of machinery, and of the best results of experience as to create the products which were most requisite for offensive and defensive war, and thereby to create the national confidence which was at the root of all the operations of the government, and was the inspiration of the people themselves.

The slaveholding States, while such, resolutely resisted the introduction among themselves of manufacturing establishments, because presumed to be inimical in their tendencies to the interests of the slave system. As a result, whatever of growth there was in this, the most productive department of human industry was almost exclusively confined to the non-slaveholding States, the broad surface of whose territory was dotted all over with these busy creators of national and individual wealth. When the war ensued the north reaped the fruit of its wisdom in its ability to convert to the uses of war the industries of peace, while the south, with few of the facilities for producing manufactures, was thrown upon resources undeveloped and irresponsible, and was forced to rely, for the instruments of self-protection, upon the labor of distant lands, whose products she was compelled to buy with a credit which had to be created, and, when bought and paid for, she had to bring through the perils of an effective blockade.

The maintenance in a settled and reasonable form of the general policy of protection must attract to this country the best of the skilled labor of the world. Each skilled laborer constitutes a material addition to the resources of the nation, and supplies one of the elements of national life. Already the tendency is strongly in this direction. Our free institutions constitute at once an inducement and an asylum, under whose beneficent operation man, as such, has opportunities and facilities for culture, development, and improvement nowhere else possible. If, to these incalculable advantages, we can add the certainty of constant employment, for self and family maintenance, we will combine influences which must inevitably draw to the country the most self-asserting, progressive, and positive of the working classes of the Old World. To this the political condition of affairs will give an increased tendency, since, with our rebellion suppressed, and a period of peace opened to us, the gathering clouds of war admonish the teeming millions of Europe that their time has come for embarrassed business, diminished wages, and, peradventure, the exchange of customary employments for the activities of the camp—and all, too, for no such noble and inspiring purpose as drew thousands of American mechanics, gladly, to the battle-field.

That we may derive just benefits from the geographical, institutional, and political advantages which now crowd upon us, the only indispensable thing is, that we be faithful to the claims and interests of AMERICAN LABOR.

Should Congress be thus faithful, the country would be at once relieved from

the drain of gold, which, in the five weeks last past, from the port of New York alone, was \$38,979,912; while the imports at the port of New York alone, since January 1, 1866, to June 17, were \$64,948,621, as against \$20,395,140 for the corresponding period last year. These two evils aggravate each other, and the only remedy for both will be found in the policy which encourages home interests, keeps at home the profits so largely paid to foreign and hostile nations, and creates a powerful, self-sustaining, wealth-producing people. It is reasonable that the importing interest should resist this policy, for its adoption will reduce their business and diminish their profits; but they are usually without citizenship in the country, without permanent interests among us, and add comparatively little to the national productiveness. It is reasonable, also, that manufacturers in other countries should lend their influence and their money to destroy protective legislation, for its tendency is to make the United States the workshop of the world, and to transfer to this coast of the Atlantic the spare capital and the growing labor which are the right arm of manufacturing industry. A striking fact, recently contained in the newspapers of the day, is worth a treatise on the subject; and your committee subjoin it for the consideration of Congress, confident that their judgment must concur with the committee's as to the true policy of the government:

[From the London Times, May 7, 1866.]

**"THE EXODUS FROM WALES.—ALLEGED UNFAVORABLE REPORTS FROM THE
WELSH MINERS IN AMERICA.**

"Last year a vast number of colliers and iron-workers, with their wives and families, emigrated from the mining district of South Wales to America—in fact, the exodus was so great that it was with difficulty many of the works could be kept fully and regularly going. At the beginning of the present spring a similar movement pervaded the district; and, in consequence of the numbers that broke up their homes for the purpose of emigrating to the New World, fears began to be entertained that the operations of the iron-works and the collieries, more especially the latter, would be again seriously interfered with. Several letters, however, have lately been received from those who went out last year, giving a most deplorable picture of the state of things in the United States, and warning those at home to stay where they are well off. This has had the effect of materially checking the emigration movement, and most of those who were making preparations to take their departure have changed their minds, and have determined to remain in the country, being at last convinced that a moderate rate of wages and regular employment are to be preferred to the uncertain result of emigration to the United States."

The investigations of your committee have led them, substantially, to the same conclusions reached by the Committee of Ways and Means, as embodied by them in the tariff bill which has recently passed the House. And they desire to place upon record their conviction that, should this bill become a law, the country will be made secure in its business interests, the ability of our people to meet the burden of taxation rendered necessary by the war will be maintained, the extravagant importations now flooding the country and endangering its financial steadiness will be checked, and an era of prosperity will be entered upon, which will be crowned with blessings and benefits.

The bill relating to the establishment of a bureau of statistics in the Treasury Department, agreed upon by the committee, has been adopted by the Committee of Ways and Means, been inserted in the tariff bill, and passed by the House; and your committee hence submit the following resolution:

Resolved, That the Committee on Manufactures be discharged from the further consideration of the petitions and bill referred to it.

The first of these is the fact that the manufacturing industry has been the mainstay of the British economy since the late 18th century. It has provided the bulk of the country's output and has been the source of most of its exports. The second is the fact that the manufacturing industry has been the main source of employment in the country since the late 18th century. It has provided the bulk of the country's labour force and has been the source of most of its income. The third is the fact that the manufacturing industry has been the main source of technological progress in the country since the late 18th century. It has provided the bulk of the country's scientific and technical knowledge and has been the source of most of its innovation.

These three facts are the basis of the traditional view of the manufacturing industry in Britain. They are the basis of the view that the manufacturing industry is the heart of the country's economy and that it is the source of its strength and prosperity.

However, in the last few decades, the manufacturing industry has been in decline in Britain. Its share of the country's output has fallen, its share of employment has fallen, and its share of technological progress has fallen. This has led to a re-evaluation of the traditional view of the manufacturing industry in Britain. It has led to a recognition that the manufacturing industry is no longer the heart of the country's economy and that it is no longer the source of its strength and prosperity.

The decline of the manufacturing industry in Britain has been caused by a number of factors. One of the main factors is the increasing competition from other countries. In the last few decades, many other countries have developed strong manufacturing industries of their own. This has led to a loss of market share for the British manufacturing industry.

Another factor is the increasing cost of production in Britain. In the last few decades, the cost of labour and materials in Britain has risen significantly. This has led to a loss of competitiveness for the British manufacturing industry.

THE CONDITION OF UTAH.

JULY 23, 1866.—Ordered to be printed.

Mr. JAMES M. ASHLEY, from the Committee on the Territories, made the following

R E P O R T .

The Committee on the Territories, to whom were referred the subjoined resolutions, have had the subject-matter therein named under consideration, and herewith submit the testimony of such witnesses as they have been able to bring before them:

The testimony discloses the fact that the laws of the United States are openly and defiantly violated throughout the Territory, and that an armed force is necessary to preserve the peace and give security to the lives and property of citizens of the United States residing therein. The only witness introduced and examined at the request of the delegate from Utah admits the necessity of maintaining United States troops in the Territory, in order to secure protection and safety to persons and property. The committee have been unable to adopt the suggestions made by some of the gentlemen examined, for the abolition of the present territorial government of Utah, and the establishment of a military government. The committee also regret to state that they have been unable to agree upon and submit for the action of the House any plan which seemed to them to promise a practical solution of the abuses and evils complained of, and which are admitted to exist. They do not deem it advisable either to divide the Territory and annex it to Nevada and the territories adjacent, nor do they favor the establishment of a military government. They have therefore been compelled to postpone the further consideration of the matter until December next, and have instructed me to report the testimony herewith submitted, and ask that it be printed. By direction of the committee the chairman was requested to notify Hon. Mr. Hooper, delegate from Utah, that witnesses were being examined before the committee, in pursuance of instructions from the House, and that he could at any time go to the committee-room, and in the presence of the clerk examine the testimony and introduce rebutting testimony, if he saw fit, or that he could be examined himself, or file with the committee a written reply, as the delegate and representative of the people of Utah. He introduced but one witness, Mr. Bennett, to whose testimony the committee ask the special attention of the House.

On the 18th of June, Mr. Hooper addressed a letter to the chairman of the committee, a copy of which is herewith submitted, in which he denies the statements of some of the witnesses named, and asks that no report be made to the House by the committee until the people of Utah can be heard in reply to the charges made against them. He also asked for a copy of the testimony already taken, which the committee declined to furnish him. He subsequently appeared before the committee and requested that a select committee or a subcommittee from the territorial committee be sent to Utah by direction of the House, with authority to examine and report on all the allegations made by the witnesses examined, as also on the condition of all classes residing in the Territory.

The committee were unable to satisfy themselves that any material facts could be obtained even if a sub-committee should go to the Territory; they therefore declined to ask the House to make an order which would necessarily involve a large expenditure of money in sending such a committee to the Territory of Utah.

All of which is respectfully submitted.

J. M. ASHLEY, *Chairman.*

CONGRESS OF THE UNITED STATES,
House of Representatives, January 8, 1866.

Mr. Ward submitted the following, which was adopted :

Whereas certain inhabitants of the Territory of Utah, in violation of the laws of the United States, have been and still are sustaining the abominable system of polygamy, and the numbers who practice it, and the crime and demoralization consequent thereon, are largely on the increase;

And whereas, for reasons not understood, the law against polygamy has not been enforced, and, in the judgment of this house, this great and remaining barbarism of our age and country should be swept (like its twin system—slavery) from the territories of the republic, and that means adequate to that end should be adopted: Therefore,

Resolved, That the Committee on the Territories be instructed to inquire and ascertain what means, civil or military, may lawfully be resorted to to effectually eradicate this evil from the land, and what legislation is needed, if any, to effect that object, and what reasons exist why the laws against polygamy have not been executed, and also to ascertain whether the United States officials in said Territory are seeking to enforce the laws, and to inquire into their conduct generally, so far as relates to the discharge of their public duties in relation to this system, and that said committee have leave to report by bill or otherwise.

Attest :

EDWARD MCPHERSON, *Clerk*,
By CLINTON LLOYD, *Chief Clerk*.

CONGRESS OF THE UNITED STATES,
House of Representatives, January 11, 1866.

On motion of Mr. Ingersoll,

Resolved, That the Committee on Territories are hereby instructed to inquire into the expediency of reporting a bill providing for the repeal of the law organizing the Territory of Utah, and for dividing said Territory, and attaching a portion thereof to the State of Nevada, and the residue thereof to the territories lying contiguous to said Territory of Utah.

Attest :

EDWARD MCPHERSON, *Clerk*,
By CLINTON LLOYD, *Chief Clerk*.

Examination by Mr. BEAMAN :

Question. Have you ever resided in the Territory of Utah; if so, when and how long?

Answer. I resided in the Territory of Utah from October, 1862, to March, 1866; was sutler at Camp Douglas (two miles from Salt Lake City) during that period; I was also engaged in mercantile business in Salt Lake City a portion of that time.

Question. What opportunity have you had of becoming acquainted with the character of the Mormon population, their system of government and religion?

Answer. My opportunities for becoming acquainted with the Mormon population, their system of government and religion, were, first, considerable transactions with their mercantile and manufacturing community in Salt Lake City; second, social intercourse with several families and individuals, members of the Mormon church; third, by attending their places of worship, reading books and newspapers for and against their doctrines, and by visiting most of the towns and settlements in the Territory.

Question. Is polygamy a fundamental principle of their religion?

Answer. Polygamy is taught in Utah as a fundamental principle of their religion. I believe the Mormon leaders have recently required its adoption by their followers, as a "test of their faith."

Question. Of what nationality are the Mormon people?

Answer. The nationality of the Mormon people is mostly English, Swedish, and Danish. The principal leaders and a few others are natives of the United States.

Question. What is the tendency of the system of polygamy upon the people, morally and politically?

Answer. The tendency of the system of polygamy upon the morals of the people is degrading. The policy of the teachers is to blunt or destroy the natural delicacy of young women by impressing upon them, in the plainest language, that it is their duty to "build up Zion" by propagating their species, and also that their eternal salvation depends upon their being united to some "saint" of their church. If this teaching fails to accomplish the intended result, a system of petty persecution is adopted by which the unwilling victim of "disobedience to council" is brought to the alternative of degradation, starvation, or of entering into polygamy. The effect of the system upon the lawful wife is seen in the dejected countenance of the once happy wife and mother, making her generally a miserable, broken-hearted woman; a few of the more zealous of them in the Mormon faith will say, "Polygamy is very hard to bear, but it is God's will." The effect of the system upon the men is to make them lustful and tyrannical; but the most deplorable "effect of the system" is to be seen among their children, who, in the absence of proper home discipline and education, are growing up with beastly ideas, and a most lamentable ignorance of all that is refining and elevating to human nature. "The tendency of the system of polygamy upon the people politically" is dangerous and hurtful to the lawful authority of the United States government. Many Mormons have been induced by their leaders to enter into polygamy, since the passage of the act of Congress upon that subject, (and I believe in many cases against their convictions of right,) thus defying the government and increasing the power of the Mormon leaders, who know that every man in polygamy is bound hand and foot to their system, "a fundamental principle" of which is, that all nations shall crumble to pieces and the Mormons rule the earth.

Question. What proportion of the Mormon population in Utah are practically polygamists?

Answer. I think about one-half of the adult Mormon population in Utah are practically polygamists, and probably one-half of the children are the offspring of polygamous parents.

Question. Is the Mormon hierarchy loyal or hostile to the government of the United States?

Answer. I believe the "Mormon hierarchy" are hostile to the government of the United States.

Question. Do you know whether or not the Mormon leaders have in any instance instigated or sanctioned the taking of human life? If you answer yes, state all your knowledge of the facts and the circumstances fully.

Answer. I do not know of my own knowledge that the Mormon leaders have "instigated the taking of human life," but I firmly believe that they have. I have seen an "official order" from one of their highest military officers, directing the killing of eighty teamsters, who were about leaving the Territory, said order stating that it was the wish of Brigham Young that not one of them should escape. I know the individual to whom said order was intrusted for execution. He shrank from the perpetration of so horrible a crime, and permitted said teamsters to escape. He is now, or was when I left Camp Douglas, on the first of March last, under the protection of the military authorities of the United States, several attempts having been made to assassinate him in Salt Lake City, to prevent, as

is supposed, his testifying to the above facts. That the Mormon leaders "sanction" the taking of human life is plainly shown in many of their sermons published in their "church organ," the "Deseret News." They call it "the shedding of blood for the remission of sins," which I understand to mean that, if a man or woman "apostatize" from their doctrine, and reveal their church secrets, "break their covenants," so called, then he or she should be put to death.

Question. State all other facts within your knowledge calculated to throw light upon the above interrogatories, and all facts tending to show the peculiarities of the Mormon system and its effects upon the people of the Territory, and its bearing upon the government of the United States.

Answer. I am confident that, if the government will afford proper protection, there are many witnesses now in Utah who will come forward and prove clearly that the Mormon leaders have both instigated and sanctioned the taking of human life. These witnesses are deterred from doing so now because they know their lives would not be safe for a day after their testimony was given. It is a "peculiarity of the Mormon system" for the leaders to spy into all the doings of their people, and to watch constantly the action of those supposed to be weak in the faith. Hence it is necessary for the government of the United States, if it desires to get at these facts, to insure to all *full and ample* protection. "The effect of the Mormon system upon the people of the Territory" is to keep the masses poor and ignorant, while most of the products of their industry finds its way into the already plethoric purses of their leaders. They generally despise the government of the United States, and are taught constantly that their allegiance is due only to Brigham Young. There are in Utah a great many young people just becoming men and women, born of Mormon parents, who know little beyond the teachings of the Mormon system. I regard them as a dangerous and rapidly increasing element against the development of our republican form of government and education in that Territory, for they are taught to look upon all anti-Mormons as enemies, and to put every obstacle they can in the way to prevent them from obtaining equal rights and justice. In short, I regard the Mormon system as a blot upon the body politic, a disgrace to the nation, and to the age in which we live.

By Mr. ASHLEY :

Question. Do the dissenting Mormons and citizens of the United States, known as "Gentiles," desire other and additional protection from the government of the United States, in order to secure them in their persons and property? If so, what change in the civil government of the Territory do they ask?

Answer. The dissenting Mormons and Gentiles *do* desire other and additional protection from the government of the United States in order to secure them in their persons and property. The change they ask is, that Congress should alter or annul the present territorial organization so as to prevent polygamous Mormons and church leaders from controlling the legislature, the courts, and juries. My own opinion is, that this reformation can be best accomplished by establishing in Utah a *firm military government*, the commanding officer of the United States forces to be governor of the Territory, independent of his military rank, with the power, both in his civil and military capacity, to enforce obedience to the laws of the United States and the laws of the Territory. That all territorial officers of a *local* character, either executive, judicial, or administrative; also judges, inspectors, and canvassers of elections, should be appointed by the concurrent action of the governor and the judges of the United States court; that all parties who have practiced polygamy since the passage of the act of Congress (1862) on that subject should be *disfranchised*; that provision should be made for the speedy trial of the Mormon leaders and others who were principal or accessory to the many murders and thefts committed in the Territory; that emigration to the Territory should be encouraged by the United States govern-

ment, giving ample military protection along the various routes thereto; that the right of suffrage should be *secured* to all citizens of the United States after a short residence in the Territory. This course pursued by the enactment of suitable laws, I believe that in a few years Utah would have a large and loyal population fit to be made a sovereign and independent State of the Union.

Sworn to and subscribed this 13th of June, 1866.

JOS. H. NEVETT.

Examination by Mr. ASHLEY:

Question. State your name, age, and residence.

Answer. My name is Joseph Smith; I am in my thirty-fourth year; and I reside at Plano, Kendall county, Illinois.

Question. Are you the son of Joseph Smith, the founder of the Mormon church in the United States?

Answer. I am.

Question. On the death of your father, who, under the rules prescribed in the Mormon book of Doctrine and Covenants, became his constitutional successor?

Answer. His eldest son.

Question. If you were the legitimate successor of your father, as the head of the Mormon church, will you explain to the committee how the twelve apostles, as they were called at Nauvoo, Illinois, with Brigham Young, as their president, assumed, after the death of your father, control of the entire Mormon organization?

Answer. At the death of my father, the twelve, with Brigham Young as their presiding officer, assumed the control of the affairs of the church, as the proper executive quorum next in authority to the quorum of the first presidency, dissolved by the death of my father and my uncle, Hyrum Smith, which right to govern and control, as such quorum, was acquiesced in by a large portion of the church upon the declaration publicly made, that such right was exercised by said quorum during the minority of "young Joseph Smith," and with reference to his attaining to proper age, and the ultimate reorganization of the first presidency in accordance with the rules of the book of Doctrine and Covenants, I being then in my twelfth year. Some time in the year 1847, as I am led to believe, Brigham Young was chosen president of the church by that portion which had left Illinois, and was then moving westward, and thereupon assumed the right and attempted to lead and control the whole church.

Question. Does the "Book of Mormon" or the book of "Doctrine and Covenants" of the Mormon church recognize or teach the doctrine of polygamy?

Answer. Neither the "Book of Mormon" nor the book of "Doctrine and Covenants" recognizes or teaches the doctrine of polygamy. On the contrary, these books explicitly condemn and forbid it; as evidence of which, the committee are referred to the following passages from said books, viz:

"Behold, it is written by them of old time, that thou shall not commit adultery; but I say unto you, that whosoever looketh on a woman, to lust after her, hath committed adultery already in his heart. Behold, I give unto you a commandment, that ye suffer none of these things to enter into your heart; for it is better that ye should deny yourselves of these things, wherein ye will take up your cross, than that ye should be cast into hell. It hath been written, that whosoever shall put away his wife, let him give her a writing of divorcement. Verily, verily, I say unto you, that whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whoso shall marry her who is divorced committeth adultery." (Book of Mormon, 3d European edition, page 460.)

"And were it not that I must speak unto you concerning a grosser crime, my heart would rejoice exceedingly because of you. But the word of God burthens me because of your grosser crimes. For behold, thus saith the Lord, this people begin to wax in iniquity; they understand not the scriptures; for they seek

to excuse themselves in committing whoredoms, because of the things which were written concerning David, and Solomon, his son. Behold, David and Solomon truly had many wives and concubines, which thing was abominable before me, saith the Lord; wherefore, thus saith the Lord, I have led this people forth out of the land of Jerusalem, by the power of mine arm, that I might raise up unto me a righteous branch from the fruit of the loins of Joseph. Wherefore, I, the Lord God, will not suffer that this people shall do like unto them of old. Wherefore, my brethren, hear me, and hearken to the word of the Lord; for there shall not any man among you have save it be one wife; and concubines he shall have none; for I, the Lord God, delighteth in the chastity of women, and whoredoms are an abomination before me; thus saith the Lord of Hosts. Wherefore, this people shall keep my commandments, saith the Lord of Hosts, or cursed be the land for their sakes. For if I will, saith the Lord of Hosts, raise up seed unto me, I will command my people; otherwise, they shall hearken unto these things." (Book of Mormon, 3d European edition, page 118.)

"Behold, the Lamanites, your brethren, whom ye hate, because of their filthiness and the cursings which hath come upon their skins, are more righteous than you; for they have not forgotten the commandment of the Lord, which was given unto our fathers, that they should have save it were one wife, and concubines they should have none; and there should not be whoredoms committed among them. And now this commandment they observe to keep; wherefore, because of this observance, in keeping this commandment, the Lord God will not destroy them, but will be merciful unto them; and one day they shall become a blessed people." (Book of Mormon, 3d European edition, page 119.)

I have used this edition of the "Book of Mormon," because it was published at Liverpool, England, by F. D. Richards, under the auspices of Brigham Young, in 1852. Several editions of the "Book of Mormon" were published prior to the death of my father, to which reference is here made, as frequent and diligent comparisons have shown that no change had been made up to the year 1852.

"Thou shalt love thy wife with all thy heart, and shall cleave unto her and none else; and he that looketh upon a woman to lust after her shall deny the faith, and shall not have the spirit, and if he repent not shall be cast out."

"Thou shalt not commit adultery; and he that committeth adultery and repenteth not shall be cast out." * *

"Thou knowest my laws concerning these things are given in my scriptures; he that sinneth and repenteth not shall be cast out." (Book of Doctrine and Covenants, editions of 1835 and 1845, sec. 13, par. 7; edition of 1863, sec. 42, par. 7.)

"Thou shalt take the things which thou hast received, which have been given unto thee in my scriptures for a law, to be my law to govern my church; and he that doth according to these things shall be saved, and he that doeth them not shall be damned, if he continues." (Book of Doctrine and Covenants, editions of 1835 and 1845, sec. 13, par. 16; edition of 1863, sec. 42, par. 16.)

"And again I say unto you, that whoso forbiddeth to marry is not ordained of God, for marriage is ordained of God unto man; wherefore, it is lawful that he should have one wife, and they twain shall be one flesh, and all this that the earth might answer the end of its creation; and that it might be filled with the measure of man, according to his creation before the world was made." (Book of Covenants, editions of 1835 and 1845, sec. 65, par. 3; edition of 1863, sec. 49, par. 3.)

"All legal contracts of marriage, made before a person is baptized into this church, should be held sacred and fulfilled. Inasmuch as this church of Christ has been reproached with the crime of fornication, and polygamy, we declare that we believe that one man should have one wife, and one woman but one

husband, except in case of death, when either is at liberty to marry again. It is not right to persuade a woman to be baptized contrary to the will of her husband, neither is it lawful to influence her to leave her husband. All children are bound by law to obey their parents; and to influence them to embrace any religious faith, or be baptized, or leave their parents without their consent, is unlawful and unjust. We believe that husbands, parents, and masters, who exercise control over their wives, children, and servants, and prevent them from embracing the truth, will have to answer for that sin." (Book of Doctrine and Covenants, edition of 1835, sec. 101; edition of 1845, sec. 109, par. 4; edition of 1863, sec. 111, par. 4.)

The edition of 1835 was published by the church, under the presidency of my father; that of 1845 under the rule of the twelve, Brigham Young presiding; and that of 1863 was published by the church, under my presidency.

Question. Will you state when this innovation was made in the doctrines and teachings of the Mormon church? Was it before or after Brigham Young became the head of that part of the church now under his lead, in the Territory of Utah?

Answer. There is no authentic account, that I am aware of, of its introduction as a doctrine of the church, until about the year 1850, and it was then advocated by that portion under the leadership of Brigham Young, although it is alleged to have been taught to individuals, privately, earlier than that date. It was not known, acknowledged, or held as an article of faith, until after Brigham Young became the leader of that part of the church which went west with him. On the contrary, the imputation of its being taught and practiced was steadily and persistently denied by all, even by those in Utah, up to as late as the year 1850, in which year, if I remember rightly, John Taylor, one of the twelve apostles under Brigham Young, in a public discussion held in Europe, denounced it, and denied their complicity with it. See O. Pratt's works.

Question. Do you intend the committee to understand that the entire Mormon church in Utah, under the lead of President Young, have apostatized from the faith first delivered to the saints by your father, and that Brigham Young and the leaders and bishops under him are usurpers?

Answer. I intend the committee to understand, that all that portion of the church of Jesus Christ of Latter Day Saints, commonly called "Mormons," under the leadership of Brigham Young or any one else, who hold to the doctrine of polygamy or plurality of wives and its kindred concomitants, have departed from the principles of the faith delivered to them by my father; and that Brigham Young and his more prominent and immediate adherents are responsible for such apostacy, and have assumed authority wrongfully to lead innocent people astray. I am not prepared to say, that all those now holding nominal adherence to Brigham Young apostatized from primitive "Mormonism;" for I have good reason to believe, that not more than one-fourth of those holding such nominal connexion with him are practical polygamists, and of that number thus practically refusing to indorse the doctrine, very many would openly disavow it, and many who do thus practically indorse it would abandon it, were they made fully aware of the falsity of its origination and adoption, and were properly secured in the safety of their persons and property during such time as might be required to fully re-establish the church upon its original doctrinal basis.

Question. You refer to the necessity of protecting the persons and property of the Mormons in Utah, should they dissent from the teachings and authority of that branch of the church which you call an apostacy, now under the leadership of Brigham Young. Do you intend the committee to understand that the lives and property of those who are now nominally members of the Mormon church in Utah would not be safe if they should refuse to recognize the leadership and teachings of Brigham Young?

Answer. I wish the committee to understand this—that there is now, and has been for some years, a well-grounded fear resting upon all persons holding nominal connexion with the church and Brigham Young who have felt restive under his government; that any attempt to openly express their opinions, or to escape from the Territory, would be met by persecutions of various kinds, in some of which the loss of life was not improbable; and this year, coupled with the inadequate enforcement of the laws of the United States in the Territory of Utah, and the easy seduction of officers of the government sent to Utah from the path of right-minded dealing with the people of the Territory, has prevented, and still does prevent the free exercise of the right of speech and action, while a system of “tangling alliances” has been sought to be enforced upon all professing “Mormonism” in Utah, that leads me to believe that the property and persons of those dissenting from the rule of Brigham Young in Utah are, and have been, insecure.

Question. Can you state something near the number belonging to the Mormon church in the United States at the death of your father?

Answer. In a work called “An Original History of the Religious Denominations in the United States,” published by Mr. I. Daniel Rupp, of Lancaster, Pennsylvania, in the year 1844, there is an article written by my father, in which the number of members belonging to the “Church of Latter Day Saints” is stated to be about “150,000;” two-thirds of which perhaps were in the United States.

Question. How long was it after the death of your father before President Young left the States for Great Salt Lake, and what proportion of the people belonging to the Mormon church in the United States did he induce to unite with him?

Answer. My father died in June, 1844, and Brigham Young left Illinois, for the west, in the spring of 1846. A temporary stop was made in western Iowa, but of how long duration I do not now remember. My opinion is, that of the number in the United States belonging to the church at the death of my father, not more than one-third went to Utah. And of the number that did go, thousands are now scattered over the United States and Territories, holding steadfastly to the principles of faith as promulgated in my father’s lifetime, and as originally understood and obeyed by them. And very many have been added to this faith under the ministration of good and loyal men.

Question. When you speak of the number belonging to the Mormon church, do you speak of communicants only, or do you include in your enumeration all children and members of the family belonging to the church?

Answer. In speaking of numbers, I refer to those identifying themselves with the church after their arrival to the years of accountability.

Question. Did the Mormon church, under the presidency of your father, or do they now, under your presidency, teach hostility to the government of the United States?

Answer. The church under the presidency of my father did not teach hostility to the government of the United States, as I have every reason to believe. Neither does it now, under my presidency, so teach; but to the contrary, we hold it to be a cardinal virtue to “be subject to the powers that be.” And, furthermore, that it is our duty to uphold good men in office; honoring magistrates and rulers as such; denouncing sedition and strife as unbecoming to the Christian and punishable by legitimate process of law.

Question. Do the leaders of that part of the Mormon church in Utah under the presidency of Brigham Young teach hostility to the government of the United States?

Answer. I cannot say of my personal knowledge that they do; nor do I know anything more respecting it than is contained in the published reports of speeches made by them in Utah and elsewhere that I have read.

Question. State the cardinal points of the faith of the church of Latter Day Saints, known as Mormons, under the presidency of your father and under your presidency, and also whether or not you accept the Old and New Testament Scriptures as of Divine authenticity?

Answer. The cardinal points of the faith of the "Church of Jesus Christ of Latter Day Saints," under my father's presidency, as I find them written by his own hand, are as follows:

"We believe in God the Eternal Father, and in his Son Jesus Christ, and in the Holy Ghost."

"We believe that men will be punished for their own sins, and not for Adam's transgression."

"We believe that through the atonement of Christ all men may be saved by obedience to the laws and ordinances of the Gospel."

"We believe that these ordinances are, 1st, faith in the Lord Jesus Christ; 2d, repentance; 3d, baptism by immersion, for the remission of sins; 4th, laying on of hands for the gift of the Holy Ghost."

"We believe that a man must be called of God by 'prophecy and by laying on of hands' by those who are in authority to preach the Gospel and administer in the ordinances thereof."

"We believe in the same organization that existed in the primitive church, viz: Apostles, prophets, pastors, teachers, evangelists," &c.

"We believe in the gift of tongues, prophecy, revelation, visions, healing, interpretation of tongues, &c."

"We believe the Bible to be the word of God so far as it is translated correctly. We also believe the Book of Mormon to be the word of God."

"We believe all that God has revealed, all that He does now reveal, and that He will yet reveal many great and important things pertaining to the Kingdom of God."

"We believe in the literal gathering of Israel and the restoration of the Ten Tribes; that Zion will be built upon this continent; that Christ will reign personally upon the earth, and that the earth will be renewed and receive its Paradisal glory."

"We claim the privilege of worshipping Almighty God according to the dictates of our conscience, and allow all men the same privilege, let them worship how, where, and what they may."

"We believe in being subject to kings, presidents, rulers, and magistrates; in obeying, honoring, and sustaining the law."

"We believe in being honest, true, chaste, benevolent, virtuous, and in doing good to all men; indeed, we may say that we follow the admonition of Paul: 'We believe all things; we hope all things.' We have endured many things, and hope to be able to endure all things. If there be anything virtuous, lovely, or of good report, or praiseworthy, we seek thereafter."

The church, under my presidency, acquiesce in and hold to the same points of faith enumerated above, to which we add that—

"We believe that God has not, at any time heretofore, nor will He at any time hereafter, reveal anything unto the children of men that will contradict and destroy the effect of any plan of salvation, or law of commandment, by obedience to which he has declared they may have eternal life, and a disregard of which will leave them without excuse and without reward, save of punishment."

Question. What protection, in your opinion, is necessary to secure the persons and property of the Mormons in Utah who dissent from and refuse to submit to the teachings of Brigham Young and the leaders of the Mormon church in that Territory?

Answer. Simply the plain official declaration of the government that such protection will be given, and the prompt enforcement of the United States law in

the Territory; the withdrawal of such governmental appointees as have only strength enough to suck the "pap" patriarchal, and the appointment of such men as have had no affiliation with treason and the evasion of the law; the prompt and effective assistance to such officers of the government as are upright enough to act rightly under adverse circumstances; such legislation as an investigation of the affairs of the Territory may seem to demand; but more than all this, such prompt and persistent administration of already existing laws, with such as may hereafter be enacted, as will establish the *fact* of protection and safety, not only in the minds of those desiring them, but also in the minds of those from whose aggressive policy such protection is desirable, whomsoever they may be.

The "Church of Jesus Christ of Latter Day Saints," known as "Mormons," both under my father's presidency and my own, accept the Old and New Testament scriptures as of divine authenticity, so far as they have been correctly translated, but believe that they have been mutilated, to some extent, in translation.

JOSEPH SMITH.

Sworn and subscribed June 23, 1866.

Examination by Mr. ASHLEY:

Question. Have you resided in the Territory of Utah; if so, how long and in what capacity?

Answer. I have resided in the Territory of Utah, as military commander of the district, since October, 1862.

Question. Have you had such intercourse with the Mormon population of Utah since your residence among them as would enable you to give this committee an insight into the principal working of their system? If so, please state what you know upon the subject.

Answer. I have had considerable intercourse with them. I have employed them a good deal, and lent them protection and assistance in various ways from the oppression of their leaders when they deserved it.

Question. Do the Mormon leaders teach and enjoin upon their followers polygamy as a fundamental principle of their religion?

Answer. Yes. The Mormon leaders of Utah do enjoin upon their followers polygamy as a fundamental principle of their religion.

Question. What proportion of the Mormon population residing in Utah are polygamists in practice? State your knowledge on this point.

Answer. I believe about one-third of the adult population.

Question. Has polygamy been practiced and inculcated by the Mormon leaders and their followers since the passage of the act of Congress in 1862 prohibiting it?

Answer. Polygamy has been inculcated and practiced by the leaders and many of their followers since the act of 1862. They are more urgent and defiant than ever in this practice. Polygamy is a test of Mormon orthodoxy. No Mormon is trusted or promoted who does not practice polygamy. The delegate from Utah Territory is an exception—in appearance.

Question. Does the Mormon system teach loyalty or disloyalty to the government of the United States?

Answer. Mormonism, in Utah, teaches disloyalty and treason to the government as a practice enjoined by their religion. It is regarded by good Mormons as not only allowable, but meritorious to assail and despoil the federal government in every practicable way. A person is not considered a thorough Mormon until he or she has taken their endowments. I have been assured by Mormons who have taken their endowments that they were compelled to subscribe to the following oath: *Second degree of Melchizedek priesthood*.—We were sworn to cherish constant enmity toward the United States government for not avenging the death of Smith and righting the persecution of the saints; to do all that we

could toward destroying, tearing down, or overthrowing that government; to endeavor to baffle its designs and frustrate its intentions; to renounce all allegiance and refuse all submission. If unable to do anything toward the accomplishment of this through life, to entail it upon our children.

Question. Can you state what proportion of the Mormon people residing in the Territory of Utah are loyal to the government of the United States, and what proportion are disloyal?

Answer. I can only say that the leaders generally are disloyal to the federal government. The exact proportion of the people who are disloyal I cannot say.

Question. Have the Mormons a State government organized and in operation; if so, how long has it been organized, and how do they keep its machinery in motion and pay the expenses thereof?

Answer. The Mormons have a State government in operation, which they call the government of the State of Deseret. It has been organized many years. They have a governor, lieutenant governor, and other officers, and members of the legislature. Brigham Young is governor and Heber C. Kimball the lieutenant governor. They hold a session of the Deseret legislature annually, immediately succeeding that of the territorial legislature, and they are composed, as I believe, of the same members. They receive a message from the governor, Brigham Young, and, I believe, have generally adopted the laws passed by the territorial legislature. The expenses, if paid at all, I believe, are paid by the federal government. At any rate, they use the building, furniture, and fuel provided by the federal government for the territorial legislature.

Question. Do you know whether the recognized Mormon leaders have assumed to authorize and justify homicide?

Answer. I have no doubt that the Mormon leaders have assumed to authorize and justify homicide. I believe it from their own record, from current report among themselves, and from a Mormon who confessed to me that he had committed murder by direction of the Mormon leaders, and believed at the time that he was doing right, as taught by them. As further evidence, I submit the following copy of a special order issued by advice of Brigham Young for the murder of eighty innocent men, discharged teamsters from General Johnston's command, then at Fort Bridger, Utah, who were *en route* for California. Fortunately the officer designated to execute the order was a humane person and did not execute it, and lately gave the original copy to a federal officer in Utah, and it is now in my possession. The signature of James Ferguson is authenticated by the affidavit of two respectable Mormon merchants of Salt Lake City.

[Special Order.]

"SALT LAKE CITY, April 9, 1858.

"The officer in command of escort is hereby ordered to see that every man is well prepared with ammunition and have it ready at the time you see those teamsters a hundred miles from the settlements. President Young advises that they should be all killed to prevent them from returning to Bridger to join our enemies. Every precaution should be taken and see that not one escapes. Secrecy is required.

"By order of General Daniel H. Wells.

"JAMES FERGUSON,

"*Assistant Adjutant General.*"

Heber Kimball, second president of the church, is officially reported in the church organ, (the Deseret News) to have said in a sermon delivered September 15, 1857, as follows, upon the shedding of blood for the remission of sins. Heber said:

I read to you from a discourse of President Brigham Young, delivered September 21, 1856:

"There are sins that men commit for which they cannot receive forgiveness in this world, or in that which is to come; and if they had their eyes open to their true condition, they would be perfectly willing to have their blood spilt upon the ground, that the smoke thereof might ascend to heaven as an offering for their sins, and the smoking incense would atone for their sins; whereas, if such is not the case, they will stick to them and remain upon them in the spirit world.

"I know, when you hear my brethren telling about cutting people off from the earth, that you consider it is strong doctrine; but it is to save them, not to destroy them.

* * * * *

"It is true the blood of the Son of God was shed for sins through the fall, and those committed by men, yet men can commit sins which it can never remit. As it was in ancient days, so it is in our day; and though the principles are taught publicly from this stand, still the people do not understand them; yet the law is precisely the same. There are sins that can be atoned for by an offering upon an altar as in ancient days; and there are sins that the blood of a lamb, of a calf, or of turtle doves cannot remit, but they must be atoned for by the blood of the man. That is the reason why men talk to you as they do from this stand; they understand the doctrine, and throw out a few words about it. You have been taught that doctrine, but you do not understand it."

Discourse of President J. M. Grant, delivered March 12, 1854. He is speaking of what he calls "covenant-breakers"—those who leave the Brighamite church—and he says:

"Then what ought this meek people who keep the commandments of God do unto them? 'Why,' says one, 'they ought to pray to the Lord to kill them.' I want to know if you would wish the Lord to come down and do all your dirty work? Many of the Latter Day Saints will pray, and petition, and supplicate the Lord to do a thousand things they themselves would be ashamed to do.

* * * * *

"When a man prays for a thing, he ought to be willing to perform it himself. But if the Latter Day Saints should put to death the covenant-breakers, it would try the faith of the 'very meek, just, and pious' ones among them, and it would cause a great deal of whining in Israel.

"Then there was another odd commandment. The Lord God commanded them not to pity the person whom they killed, but to execute the law of God upon persons worthy of death. This should be done by the entire congregation, showing no pity. I have thought there would have to be quite a revolution among the Mormons before such a commandment could be obeyed completely by them. The Mormons have a great deal of sympathy. For instance, if they can get a man before the tribunal administering the law of the land, and succeed in getting a rope around his neck, and having him hung up like a dead dog, it is all right. But if the church and kingdom of God should step forth and execute the law of God, O, what a burst of Mormon sympathy it would cause! I wish we were in a situation favorable to our doing that which is justifiable before God, without any contaminating influence of Gentile amalgamation, laws, and traditions, that the people of God might lay the axe to the root of the tree, and every tree that bringeth not forth good fruit might be hewn down.

"What! do you believe that people would do right, and keep the law of God, by actually putting to death the transgressors? Putting to death the transgressors would exhibit the law of God, no matter by whom it was done. That is my opinion.

"You talk of the doings of different governments—the United States if you please. What do they do with traitors? What mode do they adopt to punish traitors? Do traitors to that government forfeit their lives? Examine also the doings of other earthly governments on this point, and you find the same prac-

tice universal. I am not aware that there are any exceptions. But people will look into books of theology, and argue that the people of God have a right to try people for fellowship, but they have no right to try them on property or life. *That makes the devil laugh*, saying: I have got them on a hook now; they can cut them off, and I will put eight or ten spirits worse than they are into their tabernacles, and send them back to mob them."

President J. M. Grant said, September 21, 1856, (see Deseret News, vol. 6, page 235:)

"I say there are men and women here that I would advise to go to the president immediately, and ask him to appoint a committee to attend to their case; and then let a place be selected, and let that committee shed their blood."

Brigham Young said, March 2, 1856, (see Journal of Discourses, vol. 3, p. 226:)

"The time is coming when justice will be laid to the line, and righteousness to the plummet; when *we shall take the old broadsword, and ask, 'are you for God?' and if you are not heartily on the Lord's side, you will be hewn down.*"

Question. Do you know of the existence of a secret band of murderers, subject to the orders and control of the Mormon leaders, called the Danites or avenging angels?

Answer. I have no doubt there is such a band. I believe it from current report among themselves, from my knowledge derived from Mormons of the murders committed in pursuance of the orders of the Mormon leaders.

Question. Can you give the committee any facts in relation to the Mountain Meadows massacre?

Answer. Of the Mountain Meadow massacre I know nothing of my own knowledge. General report among the Mormons themselves ascribe the massacre to the Mormons by the orders of the Mormon leaders.

Question. In what way have the Mormons assumed to dispose of the public lands of the United States in the Territory of Utah, so as to exclude from their occupation all who are not Mormons?

Answer. They have granted large tracts of land to the leaders, to the exclusion of actual settlers, and the poor of their own people. Very nearly all the good timber and grazing lands in the Territory are thus granted, and the federal government and people are taxed by the holders of those grants for the occupation or use of the land and timber.

Question. Have the Mormons of Utah opposed and sought to prevent the development of the mines of that Territory by those who were not Mormons?

Answer. They have opposed the exploration and development of the gold and silver mines to such an extent that I was compelled to issue a circular warning them against using violence against citizens in the legitimate pursuit of their vocations, and in many instances furnished escorts of my troops to prospectors and miners to protect them from violence. Miners and mining are denounced by the Mormon leaders.

Question. Have you any suggestions to make as to the best mode of prohibiting the evils of which you speak?

Answer. I would recommend the passage of a law forever disfranchising and making ineligible to office all Mormons who, since the passage of the act of 1862, have entered into polygamy. The election laws should be repealed or amended, so as to admit of the right of suffrage to American citizens after a residence of thirty days. As the law now stands, aided by Mormon trickery, the so-called "Gentiles" are virtually disfranchised. There are many good people in the Mormon church of Utah, who are eagerly looking for some action on the part of Congress and the government to relieve them from the tyranny and oppressions of their leaders. The so-called "Gentile" element in Utah pray for equal

rights in the land of their fathers, and of which they are deprived by Mormon legislation, Mormon judges, perjury, and chicanery. I understand the ballot in Utah is numbered, and the number set opposite the name of the voter on the poll-list. This law should be repealed, also all laws of the territorial legislature granting special franchises to the leaders, to the exclusion of the poor of the Mormon people, and the incoming Gentile immigration. Two thousand troops should be stationed in Utah, and assurance of protection given to the people who desire to sever their connexion with the Mormon church in Utah. If this is done, and the legislation recommended is had, the problem will soon solve itself, and without conflict. The military strength of the Mormons is much over-rated. Five thousand of our men, properly commanded, can sweep the Territory like a besom.

Question. Do the dissenting Mormons and citizens of the United States, known as "*Gentiles*," desire other and additional protection from the government of the United States, in order to secure them in their persons and property; if so, what change in the civil government of the Territory do they ask?

Answer. The dissenting Mormons and Gentiles of Utah deem the presence of at least two thousand troops necessary for their protection. They have no fixed plan as to the best means to be pursued in reference to the government of the Territory. They rely upon the wisdom of Congress for action, after having the facts in regard to the condition of the Territory before them. In my opinion, a repeal of the organic act, and the passage of a law making the governor and united judges the appointing and law-making power, would meet the emergency.

P. EDWARD CONNOR.

Sworn to and subscribed this 14th day of June, 1866.

Interrogatories propounded to Norman W. Leod by Mr. RICE:

Question. Have you resided in the Territory of Utah; if so, how long, and in what capacity?

Answer. I have resided in the Territory of Utah fourteen months, as post chaplain at Camp Douglas, and as minister of the gospel and public lecturer in Salt Lake City.

Question. What do you judge the present number of the population of the Territory to be? What part of the population is Mormon, and what part anti-Mormon or "*Gentile*?" Of the Mormon population, what number or proportion are adult males, what adult females, and what is the number under the age of puberty? Is the population being increased largely by immigration? What proportion of immigrants are Mormon, and what "*Gentile*?" Please state any other facts and opinions bearing upon the subject of population in the Territory, present and prospective, which you may deem important?

Answer. In my opinion, the population of Utah Territory is less than seventy thousand. It is the policy of the leaders to exaggerate the numbers and power of the Mormons, but well-informed gentlemen, who have resided for many years in the Territory, do not place the number above what I have stated. In my opinion, the adult male "*Gentiles*" are about as one to twelve of the adult male Mormons. There is quite a percentage, however, yet claimed as Mormons, who, if assured of protection, would range themselves with the anti-Mormon or "*Gentile*" element; but owing to the fear of social ostracism, if not of severer penalties, it is difficult to elicit the sentiments of such, and to state precisely their numbers. The adult males are probably less than twenty thousand, and the adult females about twenty-five thousand. The population is yearly increased by immigration from three to five thousand. The Mormon immigration has hitherto been largely in excess of the "*Gentile*," but the discovery and opening up of the vast mineral resources of Utah will, in my opinion, reverse that, and in less than three years give a majority to the "*Gentile*" population, and a victory to the democratic-republican ideas, but full protection must be granted.

Question. Please state what you know of the agricultural and mineral resources of the Territory, as developed or capable of development. What are the inducements for permanent settlement, as regards climate, health, &c.?

Answer. Silver leads have been discovered at Rush Valley, forty miles west of Salt Lake City; also at Bingham's Canyon, some twenty miles north of Salt Lake City; also on the Cottonwood, within twenty miles of the city; also at Paraneget, three hundred and fifty miles south of the city. From the numerous assays already made, the above mines give promise of great richness. Companies have been formed and are being formed, and skilled labor and capital concentrated for their development. Discharged soldiers and miners from Nevada and California and the Territories are making new discoveries, locating feet, and will doubtless become permanent settlers. It is claimed by experienced miners that the mines of Utah are of a very permanent character, and positively inexhaustible, warranting the hope of large and permanent populations. Oil springs have also been discovered, and machinery purchased for the refining process; also iron ore of superior quality in the very track of the Pacific railroad. Within a few miles even of Salt Lake City there are many thousands of acres of unoccupied government land, capable, by comparatively small expense, of being irrigated, presenting a tempting prize to the agriculturist, with the promise of remunerative prices for all the products of his labor. There are vast stretches also of unoccupied land in various other valleys of Utah, besides the large estates usurped by the Mormon leaders and hierarchs, to which they have no title to exclude actual settlers. As to the climate, it is dry and temperate; fruits and vegetables of various kinds raised in abundance, and of fine quality. Wherever water can be found for irrigation, even the seemingly blasted desert is made a fruitful field. In my opinion, the climate and resources of the Territory of Utah are such as to warrant the expectation, at no distant day, of a numerous, healthy, and prosperous population.

Question. What do you know of the organization, faith, forms, practices, orders, obligations, and powers of the so-called "Church of the Latter Day Saints," or Mormons; does it assume and exercise political as well as spiritual powers, and in what manner? Please state fully all facts, and your opinions bearing upon this subject.

Answer. In the Mormon church there are numerous presidents, bishops, apostles, elders, teachers, but the authority resolves itself into the will of Brigham. His will is the absolute law of the faithful. The grand idea ever kept before the people is, that Brigham's will is higher than the Constitution, higher than any human law, of more binding obligation even than the Christian revelation, the latest revelation, indeed, from God. It may conflict with the civilization of the age; it may be opposed to the laws of all Christian lands; it may be in conflict with the laws of nature, but it is God's latest revelation, through his servant Brigham, and it is to be obeyed. Brigham assumes to dictate in everything. The ballot in Utah is numbered. The name of the voter can thus be detected. To oppose the nominee of Brigham is to disobey counsel and to expose himself to the terrors of the church, assuming a milder or severer aspect according to the opportunity, but always proscriptive, tyrannic, and oppressive.

Question. What is the policy of the Mormon church and people as to the settlement in the Territory of persons holding anti-Mormon sentiments; and do they favor social and business intercourse with such or otherwise; does the Mormon creed and practice forbid the marriage of Mormons with "Gentiles;" if so, under what penalties and how enforced?

Answer. It has always been Brigham's policy and that of his co-hierarch to exclude the "Gentiles." It is his counsel to the people not to sell the "Gentiles" any land, and the faithful consult him in such matters. All social and business intercourse between Mormons and "Gentiles" is discountenanced by

the leaders and frequently denounced; the merchants, lawyers, and Gentiles generally receiving large measures of abuse. Indeed, the Tabernacle and Ward House so-called sermons are largely made up of the most vile and vulgar abuse of the "Gentiles," inflaming the prejudices and passions of their people against them, classing them among everything that is impious, as if the seduction of their wives and daughters were their motive and purpose in going to Utah. For a Mormon woman to marry a "Gentile" is to exclude herself from Mormon society, and to expose herself to the obscene remarks and base allusions of a licentious priesthood. She is cut off from the church, her name read out in public with unfavorable comments, to intimidate others from a like course. For associating with the "Gentiles" young Mormon ladies of respectability are denounced from the public stands in language too vile for utterance. I beg leave, in this connexion, to submit a copy of a recent telegram from Associate Justice McCurdy, supreme court Utah Territory, also from Colonel Potter, commanding the district of Utah, to Brigadier General P. E. Connor:

"WESTERN UNION TELEGRAPH COMPANY,

"Great Salt Lake City, April 8, 1866.

"Brigadier General P. E. CONNOR, *Metropolitan Hotel, New York* :

"I married O. N. Brassfield to a Mormon woman on the 28th ultimo. Brassfield was assassinated on the night of the 3d instant. I have been denounced and threatened publicly. Government officials have telegraphed the Secretary of War to retain troops here until others are sent to relieve them. Call on Secretary of War, learn his conclusions, and answer. I feel unsafe in person and property without protection.

"H. P. McCURDY,

"Associate Justice Supreme Court, Utah Territory."

"WESTERN UNION TELEGRAPH COMPANY,

"Salt Lake City, April 12, 1866.

"Brigadier General P. E. CONNOR, *Metropolitan Hotel, New York* :

"Mr. Brassfield was married by Judge McCurdy to the second wife of a Mormon by the name of Hill, and was arrested, the first day of his marriage, for visiting the house his wife formerly lived in, to get her property, for larceny and for resisting an officer. On trial before probate court both charges failed. Writ of habeas corpus before United States court; right of custody to two children, belonging to Mrs. Brassfield, was on trial night of 3d. Hearing, night of 4th. Case adjourned to April 6. Brassfield, going home, was shot in the back and killed. Assassin escaped and no efforts made to arrest him. The Gentiles offer a reward of (\$4,500) four thousand five hundred dollars for his apprehension. Mormon press and Tabernacle seem to sustain the assassin, and dare the Gentiles to publish their names to reward offered. Have been ordered to retain troops in service until regular troops arrive.

"C. A. POTTER,

"Colonel 6th Infantry U. S. A., Commanding District."

Question. What is the penalty in the Mormon church for apostacy from its creed and practices? Have you known cases in which persecution and personal injury have followed such apostacy? if so, please state them.

Answer. Apostacy is the greatest sin recognized by the Mormon church; the penalty, to which by solemn oaths they subject themselves in the endowment house, is the shedding of their blood, by having the throat cut from ear to ear and the bowels gashed open. The doctrine taught is, that without such blood-shedding apostates cannot be saved. I beg leave, under this head, to quote from a discourse of Brigham Young, delivered in the Tabernacle, Salt Lake City, February 8, 1857, reported by George D. Watt and published in

the Deseret News: "I could refer you to plenty of instances where men have been righteously slain in order to atone for their sins. I have seen scores and hundreds of people for whom there would have been a chance in the last resurrection if their lives had been taken and their blood spilled on the ground as a smoking incense to the Almighty, but who are now angels to the devil. I have known a great many men who have left this church for whom there is no chance whatever for their exaltation; but if their blood had been spilled it would have been better for them. The wickedness and ignorance of the nations forbid this principle being in full force, but the time will come when the law of God will be in full force. This is loving our neighbor as ourselves; if he need help, help him; and if he wants salvation, and it is necessary to spill his blood on the earth in order that he may be saved, spill it. Any of you who understand the principles of eternity, if you have sinned a sin requiring the shedding of blood, except the sin unto death, would not be satisfied nor rest until your blood should be spilled, that you might gain that salvation you desire. That is the way to love mankind."

A man may be a drunkard, obscene, profane, a thief, his hands may be foul with blood, yet if he pay his tithing he is recognized as a member of the Mormon church; but let him dissent from Mormonism, and disobey counsel, and he is denounced as the vilest of men; his life is forfeited. To kill him is a religious act. It is the right way to save him. I could give you the names of parties in Salt Lake City who have been persecuted and threatened because of what the leaders are pleased to call their apostacy, but in the present state of feeling there it would not, in my opinion, be safe to do so. I have already braved the threats and revolvers of the upholders of the system, and if necessary will do so again; but decline to say anything that would deepen the hatred and inflame the vengeance of the hierarchy against those who are thinking their way to light and liberty, and whom their system has done so much to unman and to terrify. Give the protection naturally expected from the old flag to the poor tremblers of Utah, and, in my opinion, testimony, growing into demonstration, of the tyrannic rule exercised over that unhappy people will be forthcoming.

Question. What proportion of the adult Mormons, if any, do you think would choose to be released from the obligation and practice of polygamy as a part of their creed or system? If any considerable number would so choose, please state whether such sentiments are more or less prevalent among the males than the females?

Answer. It is my opinion that not over one-third of the adult males are in polygamy. I cannot tell what proportion would desire to be relieved from the obligations, though I know a few who regret bitterly that they were ever seduced into the unnatural relation. I never meet a Mormon woman, actually in polygamy, who attempts to defend the system. In many cases it is regarded as a duty to submit to the infamy—accepted as a cross, but it is crushing and intolerable. It is my opinion that what in too many cases is vile passion on the part of the men is a mistaken notion of religion on the part of the women. Once in polygamy, and the mother of children, her love for them is the chain binding her in the loathsome servitude.

Question. Have many cases of apostacy occurred among the Mormons? If so, have the apostates remained among the Mormons, so far as residence was concerned, or were they obliged to flee? Can any avowed apostate live in peace and safety in any Mormon community in which the Mormon church has full power? If apostates could be amply protected, what number do you judge would disavow Mormonism, and what proportion of them males and what females?

Answer. Many cases of apostacy have occurred, but the apostates, under various pretences, or quite secretly, sought shelter outside of Utah. There are many

in California and other places on the Pacific who were at one time identified with the Mormon church in Utah. I know of but few avowed apostates in Salt Lake City, and they are very cautious and submissive, biding their time, living in dread of the vengeance to which, by oath, they have devoted themselves, and confessing that they dare not come out more decidedly lest the troops should be withdrawn and themselves and their children devoted to the tender mercies of the Destroying Angel. It is my opinion he could not. While lecturing on polygamy in Salt Lake City, it was the reiterated remark of Mormons on the public streets that, but for the troops, I could not live an hour to give utterance to such sentiments. And apostates are hated more than any Gentile, because they have secrets the leaders dread to have revealed. It is my opinion, from frequent conversations with those who are yet claimed as Mormons, that such is the tyranny exercised over that unhappy people that without the most full and ample assurance of protection there will be no large outcoming from the ranks of Mormonism, but with such assurance of protection, given to understand that the government there, as elsewhere, has a policy and purpose of stern opposition to every attempt to crush out free speech and the exercise of the rights of American citizens. Let them comprehend that they have a banner, and large numbers will come out and, by the exercise of their proud franchise, help to uplift Utah to freedom.

Question. Aside from polygamy, what moral or immoral precepts and practices does the Mormon system enjoin? What is the general character of the Mormons as regards industry, frugality, temperance, and sobriety?

Answer. It justifies deception, theft, robbery, when the Gentiles are the victims. It fosters hatred towards all governments and all religions outside of Utah and of the Mormon religion. It devotes its enemies and opposers to perdition. It is divested of every element of the divine religion. It teaches the doctrine of the shedding of blood for the remission of sins, virtually justifying assassination. I beg leave under this head to submit the tract entitled "Brigham's Doctrines," (No. 1.) As to the general character of the Mormons, who have for years drank in its vitiating and demoralizing teachings, I beg leave to quote from Brigham Young. He remarked, in the tabernacle, November 9, 1856: "I have many a time on this stand dared the world to produce as mean devils as we can. We can beat them at anything. We have the greatest and smoothest liars in the world, the cunningest and most adroit thieves, and every other shade of character you can mention. We can pick out elders in Israel right here, who can beat the world at gambling; who can handle the cards; can cut and shuffle them with the smartest rogue on the face of God's footstool. I can produce elders here who can shave their smartest shavers and take their money from them. We can beat the world at any game." The above remarks were reported by George D. Walt, a Mormon, the church reporter, and published in the Deseret News.

Question. What is the school system in Utah, and how supported? Is there any discrimination in the schools against the children of anti-Mormons, and in what manner? Do the children of Mormons and Gentiles attend the schools together?

Answer. There is no free school system in Utah. As yet there are but few Gentile children in Salt Lake City; and we have a Gentile school.

Question. What are the teachings of the Mormon church and leaders as regards loyalty to, and respect for, the government and laws of the United States? On which side were their sympathies during the war of the rebellion? What are their feelings towards the United States troops stationed among them? What, in your judgment, would be the result if the troops should be withdrawn, as regards the peace and safety of the people who are not in sympathy with the Mormons, and persons travelling through the Territory?

Answer. During the dark years of our national agony it was the prayer and prediction of the Mormon apostles and prophets that war would continue until

both the north and south were utterly desolated, and then the Mormons would fall heir to the wealth and the women. The leaders are bitterly opposed to the troops, but many of the young women are peculiarly attached to "the brave boys in blue." As chaplain of the post I have performed many marriages within the year between soldiers and other Gentiles and Mormon women. I beg leave in this connexion to present the following extract, headed "One of the twelve on the national government:"

"At Tool City, Sunday, August 28, 1864, several of the leaders addressed a congregation. Portions of their remarks are thus reported by James W. Gibson, a soldier in the United States service. He is ready to make affidavit to the literal accuracy of the report, and Colonel Milo George, of the 1st Nevada volunteers, commandant of this post, (Camp Douglas, Utah Territory,) vouches fully for its veracity. George A. Smith is one of the twelve apostles, the highest authorities of the church after Brigham and Kimball. Among other things, he said: 'The Lincoln administration did not want peace with the south, but wanted to destroy and devastate all the good southern people. In order to do so the party in power had laid aside the Constitution entirely, and were the main ones who rebelled, and the south was right. The northern army burned and destroyed everything in the south, and abused by force all their women. They would be here some day to treat the fair women of Utah in like manner, and all, both old and young, should have plenty of arms. When they approached God would fight the battles, and the saints would be victorious. He said our government was not at peace, and damned it, and hoped to see the day when it would sink to hell. Nothing in the shape of a free government could ever stand in North American soil that was opposed to Mormonism and polygamy.'"

Brigham Young instructing his followers:

The following sentences are from the sermon of Brigham Young, (on the same occasion:) "Our constitution has been violated and misused, the whole nation and the whole world had been arrayed against the Latter-Day Saints; our government had tampered with the Mormons where it had no right to; he told the government often that he was willing to be tried here by the law for any accusation brought against him, and nothing could be done with him. The Mormons had the law in their own hands and would do as they pleased." The congregation: "Amen!" Brigham: "If they undertake to try him in a Gentile court he would see the government in hell first, and was ready to fight the government the rub. He had his soldiers, and rifles, and pistols, and ammunition, and plenty of it, and cannon too, and would use them. He was 'on it.' The governor of this Territory was useless, and could do nothing. He (Brigham) was the real governor of this people, and by powers of the Most High, he would be governor of this Territory for ever and ever. If the Gentiles did not like this they could leave and go to hell. Nine-tenths of the people of this Territory were southern sympathizers; the north was wrong, and the people sympathized with the south."

It is my opinion that were the troops withdrawn grave interests would be imperilled, a reign of terror inaugurated, and the spirit of vengeance, fostered by the teachings of the hierarchy, break forth into acts that would precipitate a conflict in which much treasure would be expended, and many precious lives sacrificed. All who are suspected of sympathy for Gentileism would be persecuted. It would be disastrous to every interest but that of the *one man power*; retard mining, endanger travel, give license and a field of operations to the revengeful bands that for years have been restrained through fear of General Connor.

Question. Are there political or military associations among the Mormons? If so, what is their organization and character? Are their meetings secret or open to the public?

Answer. They have a military organization and a secret organization connected with the Endowment House.

Question. Are the Mormons divided in political sentiment and action, or do they usually think and act together? Are they left free by the Mormon system to think and act and vote with perfect freedom, politically? Is it allowable for a Mormon to vote for an anti Mormon or Gentile?

Answer. To be a faithful Mormon, to be true to his obligations, his will must be yielded up to the will of Brigham. There is no freedom of thought or action in Mormonism. To think and act for himself, governed only by the lofty principles of reason and philosophy, would subject him to the penalties of the church. Such freedom of thought and action would be claimed as the surest evidence of apostacy. Unreasoning submission to the will of Brigham is the highest law of Mormonism.

Question. Do you know of any wrongs and outrages committed against immigrants and travellers by Indians, at the instigation of the Mormon leaders? Have the Mormons united and participated in such proceedings? Do you know anything of the "Mountain Meadow massacre," so called? Please state fully all you know, and all you believe to be true, in response to this interrogatory with the sources of your knowledge.

Answer. I do not. I believe, however, that the testimony is accumulative in Utah, that many outrages and assassinations have been committed by bands of Mormons, in the guise of Indians. I believe that during the past year Brigham has been careful to restrain the passions his teachings fostered, lest he should prejudice his cause at Washington; but that if protection were pledged, the testimony implicating many of the Mormon leaders in fearful crimes would be forthcoming, and the guilty brought to justice. Nothing can be done, however, in that regard, without protection. I know of but few who are willing to sacrifice their business, their social standing, and perhaps their life, to bring the guilty to punishment. I know persons who are claimed as Mormons who, if in safety, would disclose secrets of a most dark and damning character, but they are mute through fear.

Question. From your knowledge of the Territory and its inhabitants, what, in your judgment, would be the effect upon place and people, now and in the future, by their admission into the Union as a State, with an article in their constitution, *irrevocable*, forever prohibiting polygamy therein?

Answer. In my opinion, too many of the letter-writers and others, in the contemplated action upon the Mormon question, take for granted that polygamy is the only evil to be combatted, whereas it is only one of the fruits of the system. The whole system is pregnant with principles of eternal antagonism to the civilization of the nineteenth century. It is the purest, or rather the impurest, despotism on earth. It has no idea in common with the American idea of government. It destroys individualism. It debases manhood. The masses of the people of Utah are ignorant of America and of her institutions. Exclude polygamy and admit Utah as a State, and Brigham will be the first governor. His creatures will be the representatives and senators in Congress. His will will be the law of the blighted and hopeless State. By proscriptive laws, and by every device known to tyrants, Gentiles will be persecuted and excluded. The mining interest would be sacrificed. The leaders would have polygamy too, and every other abomination, and Brigham would boast, as he has so often done, that he had outwitted the government. To admit Utah now as a State would be to give the leaders the power to persecute the "Gentiles" and the so-called apostates, and to carry out all their vengeance. The gain of years to liberty and equitable rule in Utah, by General Connor's wise, fair, and eminently safe and dignified policy, would be lost. As Gentiles, we would have to close our church and our schools, and abandon the Territory, or enter on a hopeless combat against fearful odds for our imperilled liberties. If now, under

territorial rule, the creatures of the hierarchy *dared* to enter our place of worship on the Christian Sabbath, headed by an armed assassin, to menace free speech, and if occasion offered, to slay the speaker, what might we not expect if they had Brigham for their governor? In the name of every lofty interest of humanity and of liberty, and for the honor of our beloved country, do not involve Utah and her people in such calamities as would be sure to follow her admission. Let time be given for the various agencies there centring to do their ennobling work, and at no distant day to fit Utah to be a State in the Union.

Question. What remedies can you propose or recommend for the evils existing in the Territory, as you understand and have explained them?

Answer. Give ample protection, proclaim liberty to all the inhabitants, the sacred assurance of the government that no power, under whatever pretense, shall be allowed to intimidate or menace or injure them while in the pursuit of their lawful avocations, exercising the franchise of American freemen. So important, in my opinion, is this assurance, as an element to help solve the dark problem, that I would recommend that the President send such a proclamation to that unhappy people. It would banish their fears; it would awaken a jubilee in the land, and unwonted joy would fill the crushed heart of woman.

Withhold from the polygamists the title to the lands; disfranchise them so as to disqualify them to act as jurors and to hold office; give Gentiles the right to vote after a residence of six months; sweep away the numbered ballots; protect the Mormon people in their refusal to pay Brigham & Co. the crushing tithing; cover with the shield of the republic the heads of those who are standing up for free speech in Utah; encourage immigration, mining, and, above all, the Pacific railroad; enforce or wipe out the law against polygamy; give us two thousand troops and a commander worthy to succeed General Conner—comprehending the situation perfectly, above the facinations, allurements, and appliances of demoralization, the Mormon leaders know so well how to employ to sink men to the level of their purposes—a commander with the prestige of a name synonymous with obedience to his country's laws and with devotion to her interest, and time, in my opinion, will do the rest; the conflict of ideas will deepen, but within three years it will be determined on which side the right forces are contending.

Question. Will you give a more full explanation of the doctrine of the Mormons, as regards "polygamy," "endowment," and "sealing," as taught and practiced in their church?

Answer. In a sermon by Brigham Young, at Provo, Utah Territory, published in the Deseret News, July 14, 1855, polygamy is claimed to be the "patriarchal order of marriage, for the purpose of raising up to God a royal priesthood, a peculiar people." Brigham says, "by the introduction of this law, I can be the instrument of preparing tabernacles for those spirits which have come to this dispensation. Under this law, I and my brethren are preparing tabernacles for those spirits which have been preserved to enter into bodies of honor, and be taught the pure principles of life and salvation.

"This revelation which God gave to Joseph was for the express purpose of providing a channel for the organization of tabernacles for those spirits to occupy who have been reserved to come forth in the kingdom of God, and that they might not be obliged to take tabernacles out of the kingdom of God.

"Now, if any of you will deny the plurality of wives, and continue to do so, I promise that you will be damned; and I will go still further and say, take this revelation or any other revelation that the Lord has given and deny it in your feelings, and I promise that you will be damned."

Polygamy degrades woman. It is an insult and horror to her nature—destroying her self-respect, robbing her of the proud character of spiritual, intellectual, moral, responsible agent, with polluted hands tearing the bright crown of individuality from her brow, and entwining it with a crown of thorns—

may, putting a collar on her neck, placing her under the authority of a brutal tyrant, claimed, in the language of Heber Kimball, to be "her head, her revelator, her dictator, her prophet, her priesthood," her everything expressive of masterhood and ownership—the right to trample on her and on all her hopes. It recognizes woman as a mere animal to introduce other animals on the earthly scene. To bear children is regarded as her highest mission. The divine ideal takes in the intellectual and moral training of the young immortals, and all the necessary conditions and agencies to make that tuition a grand success. It is to fill the earth with beings of nobly developed characters; but polygamy presents none of the necessary conditions, and surrounds with none of the favorable circumstances to the increase of such exalted specimens of humanity. In its great injustice to the mother, it disqualifies her to be a mother to her children, strictly speaking, commencing its dark conspiracy against them before they see the light, and become conscious of their inheritance of shame. In a discourse of Brigham Young, delivered in the Bowery, at Salt Lake, and published in the *Deseret News*, September 21, 1856, he says:

"If my wife had borne me all the children that she ever would bare, the celestial law would teach me to take young women that would have children.

"Do you understand this? I have told you many times that there are multitudes of pure and holy spirits waiting to take tabernacles. Now, what is our duty? to prepare tabernacles for them; to take a course that will not drive those spirits into the families of the wicked, where they will be trained in wickedness, debauchery, and every species of crime. It is the duty of every righteous man and every woman to prepare tabernacles for all the spirits they can; hence, if my women leave, I will go and search up others who will abide the celestial law, and let all I now have go where they please."

He threatened all who do not submit uncomplainingly to the abomination, and promises great exaltation to those who do. "Sisters, I am not joking; I do not throw out my proposition to banter your feelings; to see whether you will leave your husbands—all or any of you. But I do know that there is no cessation to the everlasting whinings of many of the women in this Territory; I am satisfied that this is the case; and if the women will turn from the commandments of God, and continue to despise the order of Heaven, I will pray that the curse of the Almighty may be close to their heels, and that it may be following them all the day long. And those that enter into it (the celestial law) and are faithful, I will promise them that they shall be queens in heaven and rulers to all eternity." "But," says one, "I want to have my paradise now." "And" says another, "I did think I should be in paradise if I was sealed to Brother Brigham; and I thought I could be happy when I became his wife or Brother Heber's. I loved you so much that I thought I was going to have a heaven right off, right here on the spot."

The sealing is a secret ceremony in the endowment house. Those who have cohabited as man and wife and have been married before, are there sealed to each other for eternity. And it frequently happens that on the same occasion new wives are also sealed to the same man. I know a Mormon in Salt Lake City who took his endowments and was sealed to his first wife and also to two young wives on the same occasion.

The spiritual wife doctrine and the patriarchal order of marriage are one and the same. Its purpose is, the preparing of tabernacles for the spirits that are yet unclothed with flesh. In all cases where nature is not exhausted, there is cohabitation, for it is Brigham's favorite doctrine. "If my wife had borne me all the children that she ever would bear, the celestial law would teach me to take young women that would have children."

In some cases the aged wives among the faithful whose husbands have died, or who have not already been sealed to them, are sealed to other men, and hope to be their spirituals in eternity; but the women capable of bearing children, when

sealed, cohabit with the men to whom they are sealed. "Some," says Heber, in a discourse published in the *Deseret News* in 1855, "will come with great zeal, saying, 'I want my endowments; I want my washings, and anointings; I want my blessings; I wish to be sealed up to eternal lives; I wish to have my wife sealed and my children sealed to me.'" The motive that constrains the poor dupes to be sealed, is that marriage without that is only for time. "If," says Kimball, "you oppose what is called the spiritual wife doctrine, that course will corrode you with a spirit of apostacy."

Their heaven is a scene of sensualism. In remarks by Heber Kimball, in the tabernacle, February 1, 1857, he says: "Supposing that I have a wife, or a dozen of them, and she should say, 'You cannot be exalted without me,' and suppose they all should say so, what then? They never will affect my salvation one particle. Suppose that I lose the whole of them before I go into the spirit world, but that I have been a good, faithful man all the days of my life, and loved my religion and had favor with God, do you think I will be destitute then? No, the Lord says there are more there than there are here. They have been increasing there; they increase there a great deal faster than we do here, because there is no obstruction; they do not call upon the doctors to kill their offspring; there are no doctors there—that is, if there are, their occupation is changed, which proves that they are not there, because they have ceased to be doctors. In this world very many of the doctors are studying to diminish the human family. In the spirit world there is an increase of males and females; there are millions of them; and if I am faithful all the time, and continue right along with Brother Brigham, we will go to Brother Joseph and say, 'Here we are, Brother Joseph; we are here ourselves, are we not? with none of the property we possessed in our probationary state; not even the rings on our fingers.' He will say to us, 'Come along, my boys; we will give you a good suit of clothes; where are your wives?' 'They are back yonder; they would not follow us.' 'Never mind,' says Joseph, 'here are thousands; have all you want.'"

They claim the blessed Saviour to be a polygamist. In a sermon delivered in Great Salt Lake City, Elder Orson Hyde says: "It will be borne in mind that once on a time there was a marriage in Cana of Galilee; and on a careful reading of that transaction, it will be discovered that no less a person than Jesus Christ was married on that occasion. If he was never married, his intimacy with Mary and Martha, and the other Mary also whom Jesus loved, must have been highly unbecoming and improper, to say the best of it. I will venture to say, that if Jesus Christ were now to pass through the most pious countries in Christendom with a train of women—such as used to follow him, fondling about him, combing his hair, anointing him with precious ointment, washing his feet with tears and wiping them with the hair of their heads—and unmarried, or even married, he would be mobbed, tarred and feathered, and rode, not on an ass, but on a rail. What did the old prophet mean when he said, (speaking of Christ,) 'He shall on his seed prolong his days?' Did Jesus consider it necessary to fulfil every righteous command or requirement of his Father? He most certainly did. This he witnessed by submitting to baptism under the hands of John. 'Thus it becometh us to fulfil all righteousness,' said he. Was it God's commandment to man, in the beginning, to multiply and replenish the earth? None can deny this, neither that it was a righteous command; for upon an obedience to this depended the perpetuity of our race. Did Christ come to destroy the law or the prophets, or to fulfil them? He came to fulfil. Did he multiply, and did he see his seed? Did he honor his Father's law by complying with it, or did he not? Others may do as they like, but I will not charge our Saviour with neglect or transgression in this or any other duty."

BRIGHAM'S GOD.

In the *Journal of Discourses*, and also in the *Millennial Star*, Brigham says: "Adam is our father and our God, and the only God with whom we have to do."

In the Deseret News, extra, September 14, 1852, he says: "Adam came down from heaven a God, with Eve, one of his wives, into the garden of Eden, and continued to eat and drink of the fruits of the corporeal world until the grosser matter was diffused sufficiently through their celestial bodies."

ENDOWMENTS.

The endowments are given in secret in the endowment house. No one is acknowledged as a true member of the Mormon church until he receives *his endowments*. In an ante-chamber of the endowment house they are disrobed; their bodies washed, blessed, anointed with oil from the crown of the head to the soles of the feet; they are clothed with the endowment robe. The under-garment is ever after to be worn, as a safe guard against disease, accident, in which they are to be buried, and in which, it is claimed, they are to rise again. On the under garment, which fits close to the person, are marks and signs indicating to the faithful their obligations, and the fearful penalty to which they subject themselves by infidelity to those obligations or disobedience to the will of the priesthood.

They receive a new name; it is whispered in their ear by one of the hierarchy. A farce of the creation of the world and of the creation of man is enacted, certain members of the hierarchy acting the part of the Holy Trinity. A farce, also, of the temptation and the fall is enacted, one of the brethren personifying the devil or the old serpent, offering the woman fruit, and, when reproved by the representative of the Deity, hissing and retiring from her like a snake.

The ceremonial of the endowment house is to impress upon the minds of the poor dupes the necessity of the priesthood to deliver them from their fallen state, to exalt them to the felicity, and to endow them with the prerogatives, of gods. In the endowment house new chains of superstition are forged for them; new fetters placed upon their unresisting limbs. It is there that too many are unmanned and enslaved, though some date from that hour their resolve to be freemen. They enter there deceived and befooled, indeed, but with no degrading pledges, no crushing obligations, no fearful oaths of fidelity to principles, subversion of all law and of all morality, resting a mountain weight upon their consciences; but when they cross the threshold of that heathen temple, in which the lascivious Kimball is usually the presiding deity, again to mingle in the world, it is as the slaves of the priesthood.

The crown of manhood—the proud consciousness of responsibility, the individuality, the will—everything constituting manhood in its loftiest aspirations, they leave behind them as a sacrifice on the shrine of the *demon*. Henceforth they are to act at the bidding of another, even should it conflict with the claims of family, country, liberty. It is notorious that at the dictate of Brigham, merchants, mechanics, lawyers, leave all and submit to two or three years' banishment on what is called a mission to Europe or Australia.

Having taken upon themselves the vows, and submitted to the rites of the endowment, they are bound to obey the priesthood, right or wrong. That is the instruction received from their teachers and published in their sermons. The burden of all their discourses is obedience, blind and unreasoning to counsel. That is the will of Brigham. To disobey his will is to expose themselves to fearful peril. Let them once give utterance to a free thought, or speak of the evil of the one-man power, exercising the liberty without which existence itself is a burden and a curse, and some of Brigham's spies will remind them by a sign of the penalty to which they are exposing themselves, and they are mute, submissive; and that on American soil, beneath the old flag.

Hopes of yet higher mystical benefits are held out to the faithful as an inducement to contribute to the temple fund. It is claimed that in the temple alone can these blessings be received, and the hidden mysteries of their religion.

revealed. In a discourse of Brigham Young, July 8, 1856, he exhorts the people: "Then go on and build the temple of the Lord that you may receive the endowments in store for you, and possess the keys of the eternal priesthood, that you may receive every word, sign, and token, and be made acquainted with the law of angels, and of the kingdom of our Father and our God, and know how to pass from one degree to another, and enter fully into the joy of our Lord."

Question. Can you refer the committee to any books, papers, or documents which will elucidate the doctrines and practices of the Mormons, and particularly such as have emanated from, and are recognized as authentic by, them? If so, please do so, and state any other facts, and your own opinions bearing upon the subject-matter of this investigation.

Answer. In Burton's "City of the Saints," a work virtually dictated by the Mormon hierarchy, and designed to falsify the record, you will find a very full list of works on Mormonism. The man Burton gave himself up wholly to the fascinations the Mormon leaders know so well how to throw around those whom they wish to use to advance their dark purposes.

I beg to remark, in conclusion, that such is the terror of Brigham's secret power, and the deep conviction in the minds of that unhappy people of his capability, when occasion offers, of exercising that power, even to dark and fearful issues, that, in my opinion, no avowed Mormon could be found willing to testify in open court in any case in which Brigham's interest or his complicity with crime, or that of his leading men, was pending. The people know, from years of bitter experience and unmanly threats, that the voice of council—that is, the will of Brigham, even though the incentive to or the justification of crime—is yet all potent in Utah; that justice there is a mockery and a farce when sought by a "Gentile" or a so-called apostate from the Mormon church; that the reigning tyranny has every facility for the commission and concealment of crime; that when "Gentiles" or apostate Mormons are concerned the law in Utah is powerless for the detection and punishment of the guilty; that jurors and those whose duty it is to see the law respected, excepting the noble and fearless men, the federal judges, are bound by infamous oaths and infernal obligations to another tribunal, to the demon of the endowment house, and fully justified in their endeavors to defeat the high purposes of justice.

It is the constant boast of Brigham that, as in the past, so in the future, he can hoodwink Congress and the government, or purchase with greenbacks immunity in crime; that he can defeat every attempt to enforce the law of Congress against polygamy.

In his recent correspondence with General Sherman, we find him acting out his old character of arch-deceiver and unscrupulous trickster, showing himself to be as fruitful as ever in expedients to cover up the evidence of his guilt. He falsifies everything connected with the facts of the Brassfield assassination; claims that Brassfield had seduced a Mormon woman, whereas he was married to her by one of the *federal judges*. And by using the Gentile names, secured by flattery and intimidation, he seeks to convince General Sherman that "citizens of every class are tolerated and respected in Utah."

As Gentiles and anti-Mormons, we ask of Congress the rights of American citizens; the right to act as jurors; the right of the ballot; the right of liberty of speech. At present the lives of law-abiding citizens are threatened even by Brigham's police. The sanctity of our place of worship is invaded on the peaceful Sabbath by armed assassins; the life of the speaker who, in chaste and fitting terms, opposes polygamy, is menaced. The Mormon newspapers justify the outrage and encourage a repetition of such acts.

NORMAN McLEOD,

Post Chaplain Camp Douglas, Utah Territory.

Sworn to and subscribed the 15th of June, 1866.

Examination by Mr. MOULTON, at the instance of Mr. HOOPER :

Question. What is your name, and how long have you resided in the Territory, and in what capacity?

Answer. My name is E. J. Bennett; I have resided in the Territory twelve months now past, and in the capacity of commissary of subsistence of the United States, with the rank of captain.

Question. State what you know of the character of the Mormon people and their system of government, both political and ecclesiastical; also what proportion of the Mormon people are practical polygamists, and what proportion, if any, are openly hostile to the government of the United States.

Answer. From twelve months' residence among Mormons, from a close observation of their political, social, and religious organization, as a people, I consider them the most virtuous, thrifty, economical, and apparently the most happy people I ever knew. Politically, their government assumes the form of a democracy, and the church government is the same; but it is my opinion that the wishes of Brigham Young are always regarded and govern in matters of this kind. About a sixth, in my opinion, are practical polygamists, and regard it as a religious duty. As a people, in my opinion, from what I have seen in the past twelve months, they have uniformly exhibited sentiments and acts of loyalty. Have heard Young say that he was willing to abide the result of judicial authority, but would not submit to a drum-head court-martial. By virtue, I mean that there is no prostitution or intemperance, and that they live up to their faith.

Question. Have the Mormon leaders openly violated the laws of Congress prohibiting polygamy?

Answer. I presume they have, but have no personal knowledge of the fact.

Question. What are the relations between the government of the United States and the Mormons as a people—amicable, or otherwise?

Answer. Perfectly amicable on the part of the Mormons. They desire peace and harmony. But the military authorities during the past twelve months, to my knowledge, have tried to provoke difficulty with the Mormons. As an instance, Colonel Potter, then in command, (in May last,) threatened the Mormons if they attempted to execute the municipal law prohibiting drinking saloons and gambling houses he would interfere by military force. That the newspaper under control of General Connor has constantly indulged in the vilest abuse of the Mormons. This military clique sent false despatches to Washington relating to the Brassfield murder.

Question. In the absence of military authority would the property and lives of Gentiles be safe in Utah?

Answer. In my opinion, if a Gentile properly conducts himself, he and his property would be as safe as in any city in the world.

Question. Would you recommend the withdrawal of the military authority from Utah?

Answer. I think we should retain a small military force there until the law in regard to polygamy was judicially decided.

Question. If the law prohibiting polygamy was decided judicially to be constitutional, do you think the Mormons would abandon its practice?

Answer. I don't think they would openly and forcibly resist the law. I think that emigration to Utah, and contact with those opposed to polygamy, would ultimately extinguish it without any effort on the part of government. It is my opinion that the Mormon church will abandon polygamy.

Question. Do you think any law prohibiting polygamy can be enforced in Utah now, and under the present system?

Answer. I see no reason why it cannot be enforced by the aid of the military.

Question. What can you say about the value of the Territory of Utah, generally?

Answer. I consider the settlement of Utah valuable to the country at large. It is the half-way house to the Pacific, and the granary from which the surrounding territories are to receive their supplies. No other people but the Mormons would accomplish as much as they, or overcome the same difficulties. The provocation to the Mormons by the military and some Gentiles interested in contracts, is for the purpose of continuing and increasing the military force there, in order that advantage may be reaped from contracts, &c.; and thus by this combination large sums have already been illegitimately realized from the government. And the same combination is seeking to control the civil appointments of the Territory.

I am still in the service, and am here by the order of the Secretary of War.
E. J. BENNETT,

Captain and Commissary Subsistence United States.

Sworn to and subscribed July 2, 1866.

By Mr. ASHLEY :

Question. How long have you resided in the Territory of Utah, and what has been your business ?

Answer. I have resided in Utah from July, 1863, until April, 1866, and performed the duties of district quartermaster for United States troops stationed there during that period.

Question. State what you know of the character of the Mormon people and their system of government, both political and ecclesiastical ; also, what proportion of the Mormon people are practical polygamists, and what proportion, if any, are openly hostile to the government of the United States.

Answer. The Mormons, as a whole, are an ignorant, illiterate, and superstitious people ; they are mostly from the rural districts of England, Scotland, Sweden, Norway, and Denmark, and have emigrated directly from those countries to Utah, without remaining long enough in the United States to become acquainted with our system of government ; consequently, they are easily led to place implicit confidence in the teachings and government of Brigham Young and the leading men of the Mormon church, the substance of which, during the last three years, has been, that the government of the United States was to be broken up, and that no power in heaven or on earth could prevent it ; that the north and south would continue the war until nearly all the people were destroyed ; then those that remained would flee to Zion (Utah) for safety, and be brought unto the fold of the Mormon church, and, eventually, Brigham Young would become President of the United States. The system of polygamy is taught at the tabernacle and in all the ward meeting-houses, as, no doubt, the leaders believe it is a more certain way to keep the members of the church from apostatizing and leaving Utah, thereby diminishing their power, and the revenue derived by the leaders from the tithing.

I think now about one-half of the people are practical polygamists, and, as they know that they are living in open violation of the federal laws against polygamy, consequently, most polygamists are hostile to the government of the United States, being afraid that, at no distant time, the laws will be enforced.

Question. Have the Mormon leaders openly disregarded the law of Congress prohibiting polygamy, and advised their people to disobey the laws of the United States on that subject ? If you answer yes, state such facts as may have come within your knowledge on this point.

Answer. Yes ; I have on many occasions heard Brigham Young, Heber Kimball, Bishop Wodey, and others, deliver sermons advising the people to practice polygamy, and that it was a divine revelation. There are also two Mormon newspapers published in Salt Lake City that openly advocate the doctrine ; one of them edited by a polygamist named Stenhouse, who has held the office of postmaster there for four years.

Question. State what security is afforded by the government of the United States to dissenters from the Mormon church and citizens of the United States who are opposed to the Mormon hierarchy in Utah.

Answer. The district commander, General Connor, during the last three years has frequently, on application, given military protection to many dissenters who desired to leave Utah, but were liable to assassination if the protection had not been afforded. Citizens not members of the church were also liable to be imposed upon, if they expressed their opposition to polygamy.

Question. Do I understand you to say that the lives and property of dissenting Mormons and citizens of the United States would be in danger without the presence of a United States military force?

Answer. Most certainly. The numerous assassinations and massacres in Salt Lake City and vicinity, during the last twelve years, prove that it is absolutely necessary for the protection of citizens and dissenting Mormons that a sufficient force of the military should be stationed in Utah. A citizen of Nevada, temporarily sojourning in Salt Lake City, was basely assassinated, last month, by the Mormons. And others, which have taken place from time to time, and the savage, inhuman butchery of one hundred and eighty innocent men, women, and children, at Mountain Meadows, Utah, should be sufficient warning to the government.

Question. Were you in Salt Lake City at the time of the assassination of which you speak? If so, state what you know about it; also, what you may know about the Mountain Meadows massacre, to which you refer.

Answer. I was in Salt Lake City at the time, and attended the funeral of the murdered man. His name was Brassfield; he was a citizen of Nevada, but married a Mormon woman. He was arrested by the Mormons, falsely charged with theft, because his wife took her clothing from her former home; the case was appealed to the United States district court, and when the court adjourned, one evening, Brassfield was shot and killed while on the way, in company with the United States marshal, to his hotel. I know nothing, personally, in regard to the Mountain Meadows massacre, but have heard from reliable persons who were on the ground soon after it occurred, that it was done by Mormons disguised as Indians, partly for plunder and partly in revenge for what the Mormons suffered in Missouri and Illinois many years ago. The emigrants were from Arkansas, *en route* to California. The perpetrators of this act have never been punished, although some of them are well known in Utah.

Question. What action, if any, do the dissenting Mormons, and citizens of the United States who never were Mormons, desire Congress to take, with regard to the government of that Territory?

Answer. The citizens and dissenting Mormons desire that Congress shall repeal some of the acts of the Utah territorial legislature in regard to the courts, in order that the judge and all the jurors shall not be Mormons; also, to change the election laws, giving to citizens of the United States the elective franchise after a residence of thirty days. And they particularly desire that the federal officers for the Territory shall not be Mormon polygamists. And, further, that a force of at least 2,500 United States troops be stationed there for their protection.

D. B. STOVER,

Late Captain and Assistant Quartermaster U. S. Vols.

Sworn to and subscribed this 11th day of June, 1866.

HOUSE OF REPRESENTATIVES,

Washington, D. C., June 18, 1866.

SIR: On the 3d of March last I addressed you, as chairman of the Territorial Committee, a letter in the following words:

"I see by the records of congressional proceedings that the Committee on the Territories have been instructed by the House of Representatives to report touching certain abuses alleged to exist within the Territory of Utah. It is my wish, and I know it to be the sentiment of the people whom I represent, that all matters relating to that Territory should be fully and fairly investigated, and I will do all in my power to aid the committee in ascertaining the facts. I claim, as the representative of Utah, that, before your committee report to the House testimony and charges affecting the character and reputation of its people, I may be furnished with copies of the same, that they may be permitted to introduce rebutting testimony before your committee."

Reposing, with confidence, upon not only the propriety, but the right of this request, and believing that the right of any person or persons charged with crime to a defence to be fundamental, I expected nothing less than that I should be furnished with copies of the testimony taken, and that opportunity would be afforded to the parties charged with offence to be heard.

Learning more definitely that certain parties had given statements before your committee, I made (as you are aware) personal application to you, as chairman of said committee, for copies of said statements, which were denied me. I was, however, permitted to read the voluminous statements made by Messrs. Connor, McLeod, Stover, and Nevett. I have also been informed that Chief Justice John Titus had made a statement to your committee, but I have not been permitted to read his statement. My memory will not serve me to refer in detail to the grave charges and specifications preferred against the people whom I have the honor to represent. But I know these statements are made by avowed enemies of the people of Utah, and I take occasion to reiterate what I said in my letter of the 3d of March, that it is my wish and the sentiment of the people of Utah that all matters relating to that Territory should be fully and fairly investigated. But I submit that statements made in the way these have been made, by persons known to be biased and avowedly inimical to the people, presenting garbled extracts from discourses purporting to have been made years ago, and that representations alone of abuses said to exist, there is not a full and fair investigation of the acts and doings of the citizens of Utah. I, generally, deny the truthfulness of the several statements made before the committee, and am fully aware of the object sought to be accomplished by the parties making these statements, and the intent of the effect by them of this *ex parte* hearing. I ask, therefore, in behalf of the people thus arraigned and brought under charges which I believe unjust, that no report be made by your committee till the parties charged shall have opportunity to be heard, and I have no doubt that the parties against whom the accusations are made are prepared to meet and fully refute them, and are anxious for the opportunity to do so.

I have the honor to be, very respectfully, yours,

W. H. HOOPER.

Hon. J. M. ASHLEY,

Chairman Committee on the Territories.

STEAMSHIP SAN FRANCISCO.

[To accompany S. R. No. 31.]

JULY 24, 1866.—Ordered to be printed.

Mr. O'NEILL, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred joint resolution of the Senate, (No. 31,) "manifesting the sense of Congress towards the officers and seamen of the vessels, and others engaged in the rescue of the officers and soldiers of the army, the passengers and the officers and crew of the steamship San Francisco, from perishing with the wreck of that vessel," respectfully report:

That the subject has had full, mature, and ample consideration. The services rendered by Captain Creighton, of the ship "Three Bells," of Glasgow; Captain Stouffer, of the ship "Antarctic," and Captain Low, of the bark "Kilby," on the occasion of this terrible wreck, about the end of the year 1853, and their voluntary and magnanimous conduct in saving the lives of some six hundred soldiers of the United States, with the passengers and crew of the ill-fated steamship, in the estimation of the committee, indeed deserve some marked manifestation of the American Congress. The joint resolution passed the Senate unanimously on the 20th of April last, and proposed that "valuable gold medals, with suitable devices," should be presented to each of these noble captains, and that the President should reward them and the officers and crews of their vessels, and such other persons as aided in the rescue, by distributing among them, in such manner as he might deem expedient, the sum of \$50,000, and recommended that such an amount of money be appropriated out of any money in the treasury not otherwise appropriated for carrying the joint resolution into effect.

Your committee concur with the Senate in the presentation of the medals, but do not adopt the views of that body in the appropriation of so large an amount as \$50,000, although that appropriation was adopted by the unanimous vote of senators, without a division. A similar appropriation passed the Senate in the 33d Congress, but the joint resolution failed to reach the House for want of time. Your committee feeling that the justice of a suitable reward for such disinterested actions should be fully appreciated, especially in a case like the one under consideration, where these captains not only risked their own lives, but the lives of their crews and the safety of their vessels, recommend that in addition to the medals for the captains, there be given to each of the captains, viz., Captain Creighton, Captain Stouffer, and Captain Low, the sum of seven thousand five hundred dollars, to each of the mates of the respective vessels the sum of five hundred dollars, and to each man and boy of the respective crews the sum of one hundred dollars; these amounts to go, in the event of the decease of the respective captains, mates, men, and boys, first, to their widows respectively, if they be living, or in the event of their death, then to their children respectively; or there surviving neither widow nor children, then to their respective fathers; or if the fathers be not living, then to their respective mothers.

2 RESCUE OF CREW AND PASSENGERS OF THE SAN FRANCISCO.

The circumstances attending the wreck of the San Francisco were, perhaps, the most distressing known in the annals of the ocean. She was crowded with some seven or eight hundred passengers, five or six hundred of whom were officers and soldiers of the United States army, with their wives and families, on their way to California and the Pacific coast. She left the port of New York in the month of December, 1853, and, upon the 24th of that month, was overtaken by a most terrible storm, which continued without interruption twelve or thirteen days. The steamer became unmanageable and entirely at the mercy of the winds and waves. About eight o'clock in the evening the sea broke over her, and carried to the depths of the ocean nearly 180 of the soldiers and passengers, with some of the women and children. It was at this time that Colonel J. M. Washington, Major George Taylor, Captain H. B. Field, and Lieutenant Smith, all distinguished officers of the army, were lost. Subsequently, some sixty or seventy others of the soldiers, passengers, and crew died from injuries received during the storm, and from exhaustion caused by their great distress and unremitted labor.

Upon the 1st day of January, 1854, Captain Creighton, of the bark Three Bells, Captain Stouffer, of the ship Antarctic, and Captain Low, of the bark Kilby, hove in sight. Their vessels had scarcely been able to outride the storm. Their crews had been, night and day, for several days, at the pumps to keep them afloat, and their stores and water had been so much reduced by lightening their ships that starvation literally stared them in the face. Fortunately for the San Francisco, her signals were seen and her guns of distress heard by these captains, who, with all the humanity and self-sacrificing spirit for which sailors are distinguished, "stood off and on" the wreck for six consecutive days, until the storm abated, and they could so communicate with the sinking hulk as to give hope and encouragement to her desponding hundreds who momentarily expected to go to the bottom. The words of Captain Creighton, "Be of good cheer, we will stand by you," should never be forgotten. Captain Stouffer and Captain Low in the same spirit "stood by," and the Three Bells, the Antarctic, and the Kilby, all of them so injured by the storm, actually filling with water at the rate of almost nine inches an hour, never left the wreck until over five hundred survivors of the perils of this widely spread storm were saved, and eventually landed at New York and Liverpool. Many a poor sailor of each of these three vessels lost his life by his efforts in behalf of the sufferers on the San Francisco, and so crippled were the crews that port was not made for many, many days after these humane acts had been performed.

Your committee submit the amendments as indicated, and respectfully urge the House to do this eminent act of justice to the heroic captains, mates, and crews of these vessels.

NORTON'S MARKING AND CANCELLING STAMP.

JULY 24, 1866.—Ordered to be printed.

Mr. FERRY, from the Committee on the Post Office and Post Roads, made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred a "letter from the Postmaster General, transmitting additional papers relating to Norton's marking and cancelling stamp," report :

That they find that letters patent of date April 14, 1863, were granted to Marcus P. Norton, of the city of Troy, N. Y., and by him duly assigned to Jacob Shavor and Albert C. Corse, on the 20th day of April, 1863, and duly recorded, as required by law, and a reissue granted to said Shavor and Corse on the 23d day of August, 1864; which said invention, so patented, assigned, and reissued, was for, and upon, improvements in "post office post-marking and postage-stamp cancelling device," and which invention has been in practical and continuously exclusive use by and under the order and direction of the Postmaster General since the 1st of April, 1863, without compensation whatever to said patentees, nor upon any other stipulation than their consent that the same might thus be used until its utility and advantage to the government should be effectually tested, when a fair and equitable compensation for either its use or the patent should be made to them by the government.

The invention having been sufficiently proved, and its utility satisfactorily tested by uninterrupted use in various post offices of the States, application was made to the thirty-eighth Congress for compensation therefor, in accordance with the informal stipulation already referred to. Another claimant to said invention appearing, the committee of that Congress who were then considering the subject of compensation decided that, since the validity of the title to the same was called in question, *that* should first be determined by the courts, and the case was accordingly thereupon remanded.

By a transcript of the proceedings and judgment, now submitted as rendered in the United States circuit court of the northern district of the State of New York, it appears that the question of validity of title was tried, and decided in favor of the patentees, Shavor and Corse. Again, therefore, the patentees appear before the present Congress, claiming a suitable remuneration for their invention, on condition of an assignment of all their right and title to the same to the United States.

The value of this invention to the government is verified in the nature and manner following, to wit :

Having in use the said stamp, the postmasters at Washington, District of Columbia; Baltimore, Maryland; New York city, Brooklyn, Albany, Troy, Syracuse, Rochester, and Buffalo, New York; Hartford, Connecticut; Boston, Springfield, and Worcester, Massachusetts; Cincinnati, Ohio; Detroit, Michigan; and Chicago, Illinois, formally certify that in their several offices the

government is thereby saved from one-third to one-half the stamping and cancelling clerk-hire theretofore employed, and that "it greatly facilitates the despatch of letters for transportation in the mails;" that "it greatly economizes in time in the making up of the mails for transportation;" that "it cancels, in the most perfect and permanent manner, the postage stamps on letters, packets, &c., and, at the same time, gives on the envelope an intelligent post-mark;" and that "it prevents frauds by the chemical cleansing or washing of postage stamps for reuse or reissue after once used."

Its utility, facility, and economy are so far established that it is being introduced to the larger post offices of the States as rapidly as they can be supplied. The government has contracted for their manufacture with Messrs. Fairbanks & Co., of New York, at the price of six dollars each, and is now supplying offices at the average rate of five hundred per annum. From the interruption of postal facilities, growing out of the late rebellion, the southern States have not been supplied, but will be, as stated by the Postmaster General, as fast as the department can effect their introduction.

The Post Office Department seems committed to their general and continuous use, so long at least as no other improvement shall commend supersedure. The nearest approach to a practical substitute for this invention is one of English device, manufactured by Turner & Co., London, and to be seen at the Washington post office. This is a more complex and expensive stamp. Its only novel merit is self-inking. The stamp employed is the same combination of stamping and cancelling covered by the "Norton patent," and is claimed by him to be an infringement of his invention, and that he holds a patent for his like combination stamp under the English crown of date February 4, 1863. The similarity of the two stamps, in this respect, is quite obvious. The cost of this English stamp is one hundred dollars, ninety-four dollars more than the Norton make, and, by the complication of its structure, must by use be subject to frequent repairs. A trial of the two methods of execution, fairly tested in the presence of your committee, attested the superiority of the Norton stamp. The same number of letters (100) was stamped and cancelled by the Norton stamp in twenty-eight seconds, which by the same operator required forty-five seconds with the English stamp. The Norton stamp is therefore deemed the most perfect and serviceable device extant. The government in consulting its interest has fully committed itself to its adoption, and over three year's use determines it an indispensable requisite to the safe, rapid, and economical operation of marking, stamping, and cancelling in the postal department.

The patentees claim, as a just compensation for the title and past and future use of their said invention, the sum of one hundred and twenty-five thousand dollars.

The Postmaster General, on the other hand, in a letter on the subject, filed with the papers in the case, recommends as a proper compensation therefor the sum of twenty thousand dollars, and the further sum of \$12,282 70 with interest, being the amount of expenses incurred by the patentees in establishing their legal title to the invention. It is set forth in said letter from the Postmaster General that at the date thereof the government saved by the use of said stamp the compensation of 254 clerks of the various salaried classes. At an average salary of \$800 per annum, this saving would amount to the sum of \$203,200, and an aggregate at this rate, for the three years the government has enjoyed the use of the stamp, the sum of \$609,600. In view of this computable saving directly traceable to the use of this stamp, and without approximating the gain by its future use in many more offices throughout the States where they are being rapidly substituted for the old discarded device, it would seem that the sum stated by the Postmaster General is not an adequate or just compensation for such undeniable and valuable benefits which the government derives. The committee, therefore, after a thorough consideration of the subject,

have determined upon the sum of fifty thousand dollars as a full and just compensation to the patentees for the use of and the device and patent, with the alternative that if not accepted by the patentees within thirty days from the approval of the resolutions providing for the same, as in full compensation for their claim, and the transfer of the patent, they, by their non-acceptance, elect to receive whatever may be adjudged to them therefor by the Court of Claims as full and final payment. To carry out such determination, the committee recommend the passage of the accompanying joint resolutions.

REWARD FOR THE CAPTURE OF BOOTH.

[To accompany bill H. R. No. 801.]

JULY 24, 1866.—Ordered to be printed.

Mr. HOTCHKISS, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, pursuant to the resolution of the House of Representatives of May 7, 1866, which was in these words—

On motion of Mr. Kelley,

Resolved, That the Committee of Claims be instructed to inquire into the fairness and propriety of the distribution of the rewards offered for the arrest of Jefferson Davis and the conspirators to murder President Lincoln.

submit the following report :

Your committee have carefully considered the claims of the parties presenting evidence to them, or as to the merits of whose claims they have been able to procure evidence, and the terms of the several offers of reward, and the circumstances under which they were made, and they respectfully report, that, in their judgment, a liberal construction of such offers authorizes the award of five thousand dollars to the parties engaged in the arrest of Payne, who attempted the assassination of the Secretary of State, which sum is, in the opinion of the committee, amply sufficient to compensate the parties who effected such arrest for the time and efforts devoted to that end. The circumstances attending such arrest were, to state them briefly, as follows :

On Saturday night, the 15th April, 1866, Susan Mahony, now Susan Jackson, a colored servant girl of Mrs. Surratt, by feigning sleep, overheard disclosures and witnessed transactions, at Mrs. Surratt's house, showing that the inmates of, and the visitors at, that house were connected with the assassination plot. On the next day she made haste to communicate these facts to her aunt, Mary Ann Griffin, a colored woman of this city in the employ of John H. Kimball. This woman on the next day communicated the same to Mr. Kimball, who acted upon this information. These colored women were somewhat tardy in their movements, but it should be borne in mind that they were under the restraints incident to their life-long position of servitude and assumed inferiority ; and fears for their personal safety, with a certain prospect of loss of place and employment, to say nothing of persecution in case they should be suspected of being informers against their employers. Under these circumstances the committee regard their conduct as highly commendable, and their acts as coming within the spirit and letter of the offers of reward for the arrest of Payne.

It has been further shown to the committee that the said Kimball, immediately upon receiving the aforesaid information, started for General Augur's headquarters ; that on the way he was joined by Mr. P. M. Clark, who was making voluntary efforts to discover the assassins ; that the two were instrumental in setting the force in motion for taking possession of the Surratt house.

The committee, therefore, regard the said Kimball and Clark as parties to the proceedings which, as hereinafter shown, resulted in the capture of Payne.

Immediately upon the examination of Kimball, at General Augur's headquarters, a force of five detectives, commanded by Major H. W. Smith, took possession of Mrs. Surratt's house, and in a short time thereafter Payne came there and fell into their hands.

And the committee further report that in their opinion the sum to be awarded should be distributed as follows :

To Major H. W. Smith who had charge of, and commanded the force,	
the sum of.....	\$1, 000
Richard C. Morgan, detective.....	500
Eli Devore, detective.....	500
Charles H. Rosch, detective.....	500
Thomas Sampson, detective.....	500
William M. Wermerskirch, detective.....	500
John H. Kimball, citizen.....	500
P. M. Clark, citizen.....	500
Susan Jackson, colored.....	250
Mary Ann Griffin.....	250

The committee further report that the arrest of Atzerodt, one of the conspirators, for whom a reward of twenty-five thousand dollars was offered, was effected by a force sent out by Major Enos R. Artman, of the 213th Pennsylvania volunteers, then in command at the military post at Monocacy Junction, Maryland; that such arrest was made on the 20th of April, 1865; that the information which led to such arrest was furnished by James W. Purdam, a citizen of Maryland, who was also one of the party that made the arrest, and the men who made the arrest belonged to the 1st Delaware cavalry, and were under the immediate charge and command of Sergeant Zachariah W. Gemmill. Major Artman was acting in a military capacity, and was responsible for the inception, planning, execution, and result of the enterprise; and had he shown a want of skill, energy, fidelity, or discretion, the consequences to him would have been disastrous. It is therefore submitted, that he is entitled to much greater consideration than the subordinates who merely executed his orders, however much fidelity they may have shown, but who were only bound to obey orders, and were not responsible for results.

The same reasoning is applicable to the case of Sergeant Gemmill.

Citizen Purdam is, in the opinion of the committee, entitled to a liberal share of the reward for his zeal, energy, and fidelity in procuring information, disclosing the facts, tracing the culprit to his hiding place, and aiding in his arrest.

And the committee would recommend that the reward for the arrest of Atzerodt be distributed as follows :

To Major Enos R. Artman.....	\$10, 000 00
Sergeant Zachariah W. Gemmill.....	5, 000 00
Citizen James W. Purdam.....	3, 000 00
Private Christopher Ross.....	1, 166 67
David H. Barker.....	1, 166 67
Albert Bendee.....	1, 166 67
Samuel J. Williams.....	1, 166 67
George W. Young.....	1, 166 66
James Longacre.....	1, 166 66
	25, 000 00

The committee further report that the expedition which resulted in the capture of Booth and Herold was planned and directed by Colonel (now General) Lafayette C. Baker, then a detective officer of the War Department; the force consisting of Lieutenant Colonel Everton J. Conger, Lieutenant Luther B. Baker, then in the detective service, Lieutenant Edward P. Doherty, and twenty-six privates of the 16th New York cavalry.

And the committee further report that Major James R. O'Beirne, then provost marshal of the District of Columbia, General H. H. Wells, then under General Augur's command, George Cottingham and Alexander Lovett, detectives, and Samuel H. Beckwith, a telegraph operator, rendered important service leading to the arrest of Booth and Herold, and the committee regard them as coming within the terms of the offer of rewards.

The committee do not regard the capture of Booth and Herold as purely military service, and do not feel bound to award compensation to mere rank, without regard to the extent and merit of the service performed, but look to the rank and position of the officers engaged in such service as evidence of the opportunity afforded them and the duty imposed upon them to exercise greater care, skill, and diligence than persons in a subordinate position.

And the committee further report, after a careful consideration of the evidence presented to them of the services of the respective parties engaged in the capture of Booth and Herold, in their opinion, the sum of seventy-five thousand dollars reward for the capture of said Booth and Herold should be distributed as follows :

To Lafayette C. Baker, chief detective.....	\$17, 500
To Everton J. Conger.....	17, 500
To Luther B. Baker.....	5, 000
To James R. O'Beirne.....	2, 000
To H. H. Wells.....	1, 500
To George Cottingham.....	1, 500
To Alexander Loyett.....	1, 000
To Samuel H. Beckwith.....	500
To Lieutenant Edward P. Doherty, 16th New York cavalry.....	2, 500
To Sergeant Boston Corbett, 16th New York cavalry; Sergeant Andrew Wendell, 16th New York cavalry; Corporal Charles Zimmer, 16th New York cavalry; Corporal Michael Uniac, 16th New York cavalry; Corporal John Winter, 16th New York cavalry; Corporal Herman Newgarten, 16th New York cavalry; Corporal John Walz, 16th New York cavalry; Corporal Oliver Lonpay, 16th New York cavalry; Corporal Michael Hormsby, 16th New York cavalry; Private John Myers, 16th New York cavalry; Private John Ryan, 16th New York cavalry; Private William Byrne, 16th New York cavalry; Private Philip Hoyt, 16th New York cavalry; Private Martin Kelley, 16th New York cavalry; Private Henry Putnam, 16th New York cavalry; Private Frank McDaniel, 16th New York cavalry; Private Lewis Savage, 16th New York cavalry; Private Abraham Genay, 16th New York cavalry; Private Emery Parady, 16th New York cavalry; Private David Baker, 16th New York cavalry; Private William McQuade, 16th New York cavalry; Private John Millington, 16th New York cavalry; Private Frederick Deitz, 16th New York cavalry; Private John A. Singer, 16th New York cavalry; Private Carl Steinbrugge, 16th New York cavalry; Private Joseph Zisgen, 16th New York cavalry, one thousand dollars each..	26, 000
Total.....	<u>75, 000</u>

The committee regret that the terms of the offers of reward preclude their recommending awards to other parties engaged in the capture of Mudd, O'Laughlin, and other conspirators; and they would particularly notice and commend the arduous and meritorious services rendered by Marshal McPhail, of Baltimore.

And the committee further report that no objection has been presented to them to the distribution of the reward for the capture of Jefferson Davis, recommended by the commission appointed by the War Department, they therefore recommend the adoption of the same, as follows:

Lieutenant Colonel B. D. Pritchard	\$10,000 00
Captain John C. Hathaway	729 60
Captain Charles C. Hudson	729 60
First Lieutenant Lauren H. Ripley	555 88
First Lieutenant John A. Palmer	555 88
First Lieutenant Henry S. Boutell	555 88
First Lieutenant Herbert A. Bachus	555 88
First Lieutenant Silas J. Stauber	555 88
First Lieutenant Charles W. Fisk	555 88
First Lieutenant T. H. B. Hazelton	555 88
Second Lieutenant Hiram D. Treat	555 88
Second Lieutenant John Bennett	555 88
Second Lieutenant Chacla M. Bickford	555 88
Second Lieutenant Lorenzo T. Southworth	555 88
Second Lieutenant Alfred B. Purinton	555 88
Second Lieutenant Leonard C. Remington	555 88
Second Lieutenant Samuel F. Murphey	555 88
Adjutant Julian G. Dickinson	666 10
Regimental Quartermaster Perry J. Davis	660 10
Regimental Commissary John S. Pugsley	660 10
Assistant Surgeon John A. Grooves, (98th Illinois mounted inf'y)	555 88
Sergeant Major Fitz E. Stevens	271 00
Hospital Steward Amos Knight	239 72
Commissary Sergeant Harlan P. Dunning	229 30
First Sergeant Othniel E. Gooding, company A	250 15
First Sergeant John W. Bradner, company B	250 15
First Sergeant John H. Shoemaker, company C	250 15
First Sergeant Edwin Hines, company E	250 15
First Sergeant Stanley L. Nichols, company F	250 15
First Sergeant Francis Maguire, company G	250 15
First Sergeant George Hall, company H	250 15
First Sergeant E. F. Price, company I	250 15
First Sergeant George Davenport, company K	250 15
First Sergeant Wesley D. Pond, company M	250 15
Sergeant B. Frank Gooding, company A	208 45
Sergeant Thomas Davis, company A	208 45
Sergeant George H. Simmons, company A	208 45
Sergeant Thomas Riley, company A	208 45
Sergeant George Miles, company A	208 45
Sergeant Rezin Wright, company A	208 45
Sergeant Wakeman L. Grant, company B	208 45
Sergeant Morris Brass, company B	208 45
Sergeant Abel A. Braley, company B	208 45
Sergeant Simon Voght, company B	208 45
Sergeant Alondo E. Ford, company B	208 45
Sergeant Charles L. Leathers, company C	208 45
Sergeant Thomas D. Smead, company C	208 45

Sergeant Edward W. Parker, company D.....	\$208 45
Sergeant Robert W. Morris, company D.....	208 45
Sergeant David B. Green, company E.....	208 45
Sergeant William F. Babcock, company E.....	208 45
Sergeant George A. Bullard, company E.....	208 45
Sergeant Calhoun M. Burch, company E.....	208 45
Sergeant Benjamin S. Vest.....	208 45
Sergeant John C. Correnton, company F.....	208 45
Sergeant Thomas Gorman, company F.....	208 45
Sergeant Howard A. Dickerson, company F.....	208 45
Sergeant John C. Nichols, company G.....	208 45
Sergeant Benjamin F. Archer, company G.....	208 45
Sergeant Jacob N. Trask, company G.....	208 45
Sergeant James T. Obrien, company G.....	208 45
Sergeant John Cavanaugh, company G.....	208 45
Sergeant Jeremiah P. Craig, company G.....	208 45
Sergeant William H. Palmateer, company G.....	208 45
Sergeant Horace B. Warner, company H.....	208 45
Sergeant Solomon Wightman, company H.....	208 45
Sergeant Samuel Van Etten, company H.....	208 45
Sergeant Martin Horan, company H.....	208 45
Sergeant Daniel O'Crotty, company H.....	208 45
Sergeant Emery A. Miller, company I.....	208 45
Sergeant Lester P. Bates, company I.....	208 45
Sergeant Ansel Adams, company K.....	208 45
Sergeant George R. Vantine, company K.....	208 45
Sergeant Andrew Snook, company K.....	208 45
Sergeant Joseph Hofmaster, company L.....	208 45
Sergeant John F. Beebe, company L.....	208 45
Sergeant Levi Tuttle, company L.....	208 45
Sergeant Gurdon N. Kenyon, company L.....	208 45
Sergeant James H. Holdsworth, company L.....	208 45
Sergeant Benjamin K. Colf, company L.....	208 45
Sergeant Alonzo C. Burnham, company L.....	208 45
Sergeant Edwin Pearce, company M.....	208 45
Sergeant George W. Collins, company M.....	208 45
Sergeant Roland Osgood, company M.....	208 45
Sergeant James W. Argo, company M.....	208 45
Corporal Darwin Dunning, company A.....	187 61
Corporal William P. Smith, company A.....	187 61
Corporal Robert L. Reynolds, company A.....	187 61
Corporal Lyman J. Russell, company A.....	187 61
Corporal William Crow, company B.....	187 61
Corporal John F. Shurburn, company B.....	187 61
Corporal Chester Barber, company B.....	187 61
Corporal C. F. Parker, company B.....	187 61
Corporal Nelson B. Tuttle, company B.....	187 61
Corporal A. W. Kenney, company B.....	187 61
Corporal Baxter B. Bennett, company B.....	187 61
Corporal Abram Sebring, company C.....	187 61
Corporal Charles Burrell, company C.....	187 61
Corporal Reuben Palmerton, company C.....	187 61
Corporal David Q. Curry, company C.....	187 61
Corporal George M. Munger, company C.....	187 61
Corporal James Place, Company D.....	187 61
Corporal Ephraim Truesdell, company D.....	187 61

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And the committee further report that, in their opinion, provision should be made to guard against the persons entitled to awards herein recommended being defrauded of their rights by pretended agents, assignees, or extortioners.

The committee have prepared a bill, which accompanies this report, in accordance with the views herein set forth; and they respectfully recommend its passage.

G. W. HOTCHKISS.
H. D. WASHBURN.
HAMILTON WARD.
A. A. BARKER.

I agree that the report may be made without committing myself.

ANTHONY THORNTON.
C. DELANO.

NEUTRAL RELATIONS.

[To accompany H. R. No. 806.]

JULY 25, 1866.—Ordered to be printed.

Mr. BANKS, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to which was referred for consideration resolutions concerning the present struggle of Ireland for independence and for the repeal of the laws, with other papers upon the same subject, have complied with the orders of the House, and respectfully report :

The statutes defining the neutral relations of the United States with other nations ought to rest upon the recognized principles of the law of nations, the stipulations of treaties to which they are a party, and such reciprocal legislation as may be enacted in concert or co-operation with other States for the promotion of public peace.

There is nothing at this time which can justly compel the United States to enact, maintain, or enforce principles of neutrality which are not accepted or acted upon by other States. The duty that neutrality imposes is reciprocal and not arbitrary. It is doubtless expedient and necessary that these principles, whatever they are, should be in the form of a statute, simple and comprehensive, in order that the people may be instructed in their duties and in the privileges secured to them. The repeal of existing statutes would impose the necessity of enacting other laws upon the subject. It is believed, however, that the condition of the country and its changed relations to other governments which naturally result from the great events of the last half century, will justify if they do not demand a critical and liberal revision, with a view to their better adaptation to the present condition of public affairs.

A brief review of the history of the several neutrality acts passed by Congress since the organization of the government will show how far existing legislation is justified by the principles of international law, the treaties we have negotiated with other governments, or the legislation of other nations, and to what extent the repeal or amendments of these acts may be justified or demanded. The independence of the American colonies was acknowledged by Great Britain in 1783. The participation of the colonies in the Indian and French wars, and the severe and long-continued struggle of the Revolution made it necessary that the new government under the Constitution should husband its resources, and, if possible, avoid all complications with foreign nations. The foreign policy of the administration of Washington—as wise and necessary as it was successful—was based upon this idea. It is now conceded that the safety of the republic imperiously demanded this policy. But the people not immediately responsible for the success of the administration were impatient for more resolute and decided action than it proposed. The war between France and England, was at that time waged with relentless vigor. The solicitude which had been constantly manifested during our struggle for our success by the

government and people of France, created an intense interest among all classes of Americans for the victory of France against the common enemy of both nations. This feeling was everywhere enthusiastically expressed in addresses and resolutions of legislative and popular assemblies, in the discussions of the public journals, in the fiery appeals of partisan leaders, as well as in the social circles of the people themselves.

The enthusiasm of republicans for France, and their hostility to England, was not much less marked in America than in France. It brought public opinion to the verge of revolt against the peaceful policy of Washington. Accountable to the people for its resistance to popular clamor and the consequences of its timid submission to the demands of England, whose arrogant pretensions intensified the popular friendship for France, the administration was threatened with formidable resistance, if not the overthrow of its policy.

The intemperate conduct of an agent of France changed the current of popular opinion, and gave to Washington's administration a strength which it could not have received from its measures as they were then interpreted by the people. Mr. Genet, the agent of France, was emboldened by the enthusiasm with which he was received south and north, to disregard the authority of the government. He authorized the raising of troops, and commissioned officers and vessels to cruise upon the seas against the commerce of England. Against these proceedings the British minister at Washington made earnest protest. Public opinion, in the presence of the palpable consequences of its untamed ardor, tempered its opposition, and enabled the administration not only to preserve its neutrality between France and England, but also to gratify England by the enactment of statutes for its protection more explicit and stringent than those imposed by the law of nations. The act of 1794 was the first law of the United States upon this subject. The neutrality which this statute contemplated was that enforced by the law of nations—an absolute impartiality between contending parties, and the assertion and defence of our own rights as a neutral nation. It did not, however, fully answer the purpose, nor silence the claims of Great Britain. The act of 1794 was not passed in pursuance of the provisions of the Constitution making it the duty of Congress to punish offences against the laws of nations. It was entitled, "An act to punish offences against the laws of the United States;" offences not found in previous legislation of this or other nations, but mainly created by the act itself. It prohibited citizens of the United States, under heavy penalties of fine, imprisonment, and confiscation of property, from accepting commissions in the service of nations at war with each other, with which we were at peace; the fitting out or increasing the force of any vessel of war, with intent to enter such service; and gave to the President full power to compel the observance of its provisions. The character of the act, and the extent to which it came in conflict with the opinions of the people, as well as the extraordinary influences under which it was enacted, are indicated by the fact that its operation was limited to the term of two years. For a time it answered the demands of other governments. But in 1797 the statute was amended by further restrictions upon commerce and the people. Neither the interests of France nor public sentiment prompted this change in the existing law. It could have been suggested only by the power that prompted the original enactment. The law of 1794 operated only upon citizens of the United States within the jurisdiction of the United States. The law of 1797 operated against citizens of the United States beyond its limits and jurisdiction. The law of 1794 prohibited, under heavy penalties, the fitting out vessels of war for certain specified purposes; that of 1797 made this provision applicable not only to vessels of war, but to "private ships," and increased the penalties for its violation. It increased the fine from three to ten thousand dollars and the imprisonment threatened from three years to ten years. It also prohibited the exportation of arms, equipments, vessels, &c., until the end of the session of 1798. The law of 1794 was limited to two years.

That of 1797, except as to the exportation of arms, &c., was made permanent. These provisions indicate clearly under what influence they were enacted, and what interests they were intended to subserve. But it is to be specially noted, with reference to the history of the time, and also with regard to subsequent legislation upon the subject of our neutral relations, that in the terrible conflict between England and France, in which each nation contended not only for supremacy in Europe, but also for its existence, the statutes of 1794 and 1797, the first for a period of three years, and the second for twenty years, during which the whole of Europe was involved in war, were sufficiently stringent in their prohibitions upon American commerce and the American people to satisfy and silence the claims of the nation most ambitious for supremacy upon the land and sea. We were then in condition to have done more and gone further in this direction if it had been deemed necessary or just. But no further claim for protection was made, and the neutrality statutes of 1794 and 1797 remained unchanged for more than twenty years.

Early in the present century the Spanish provinces in America revolted against the oppressive government of Spain, and asserted their independence. The success of this revolution gave to the world eight sovereign and independent nations. The independence of the Spanish republics was hailed by the people of this country as the most auspicious event of the age. No government in Europe except that of Spain had resisted the freedom of the Spanish provinces by force. But all the nations of Europe in alliance with Spain maintained her right to the government of the colonies. Great Britain had been invited by Spain, in conjunction with the European alliance, to mediate between her and the colonies, upon the basis of their continued submission to her authority, with certain ameliorations as to commerce and the appointment of officers. The United States, whose co-operation was solicited by Great Britain, declined to enter into any plan of pacification, except upon the basis of their independence. The recognition of their independence was deferred for several years in deference to the authority of the Holy Alliance. Spain declared that such recognition would be regarded by her as an act of hostility. Their independence was recognized in 1822, after a contest of twelve years. The sympathy of the American people for the Spanish patriots was sincere and universal, and their hostility to the government and institutions of Spain was equally strong. The proximity of the Spanish provinces to our own country, and their inability, on account of their want of vessels-of-war, to cope with Spain upon the sea, rendered it difficult to prevent our citizens from giving them aid in their struggle for liberty. It was still more difficult to allay the suspicions of the European governments of our complication with the revolutionists. The statutes of 1794 and 1797, which had been sufficiently strong to satisfy the demands of England during her struggle with France, did not satisfy those who supported the authority of Spain over the colonies. To quiet these apprehensions and more completely to fulfil all possible obligations of a neutral State, the statute of 1817 was enacted. The purpose of this act was stated in its title. It was an act to "preserve neutral relations." This statute embraced two principles not contained in the acts of 1794 or 1797. It required the government to take bonds from owners of armed vessels that no person within or without the jurisdiction of the United States should use them in contravention of its neutrality laws, and it authorized and directed collectors of customs, upon mere suspicion of such intent, to seize and detain them until an order of release should be obtained from the President. It was not denied that an armed vessel might be lawfully sold by an American citizen to a foreign subject, other than a subject of Spain, but it was thought necessary to make the American citizen responsible for the action of the foreign subject wherever he might be, and thus indirectly to prohibit the sale of American vessels. It was an act not to punish, but to prevent crime on the part of American citizens, by depriving them of the

power of its commission. It was the assertion of the right of a belligerent not only to punish the violation of laws, but to demand the surrender of power to disregard them. It was not legislation to punish crime against the law of nations, but to prevent offences against Spain; and that at a moment when she was drawing her supplies from the United States to carry on the war against her colonies through the port of Havana, which was open to us only for that purpose. The manifestation of public feeling against the act of 1817 was so strong and general as to suggest a revision of the several neutrality acts, and the consolidation of such provisions as were deemed necessary to maintain the peace of this country with other nations in a single statute. This was done in 1818. The act of that year constitutes the law of neutrality now in operation in this country; and it is the repeal of this act to which the attention of the committee has been called by order of the House. This act was the result of a strong public feeling against the law of 1817, and the earnest and united representations of foreign governments against the interference of American citizens in the struggle of the South American States for independence against Spain. Owing to the persistent power of foreign representatives the new act, notwithstanding their manifest unpopularity, embodied all the objectionable provisions of preceding legislation. Its merit was that it embraced in one statute all legislation upon this subject, giving to its provisions the vigor of a new act, to which the attention of the executive officers of the country would be called. Its ablest opponent was Henry Clay, then Speaker of the House. He characterized it as an act for the benefit of Spain against the republics of America. It was enacted upon the pressing claims of Spain and Portugal, backed by the representative of Great Britain. No other country had adopted such provisions of law for the maintenance of its neutral obligations. It forbade citizens of the United States to accept commissions in the service of any government at war with other nations and at peace with us; it prohibited enlistments in the United States; the fitting out or increasing the force of vessels-of-war within or beyond the jurisdiction of the United States with intent to enter such service, under a penalty of the confiscation of property, and punishment by fine not exceeding \$10,000 and imprisonment not to exceed ten years. Owners or part owners of vessels were required to give bonds in double the value of vessel, cargo, and armament, that they should not be used in contravention of law; and collectors of customs were authorized and directed to seize and detain, until the will of the President could be ascertained, vessels upon mere suspicion they were to be so used. Previous statutes had been temporary in whole or in part. This act was made permanent. It is impossible to suppose that provisions so repressive upon American commerce, so hostile to the cause of liberty in the colonies, and so strongly in favor of a government whose principles were so repugnant to the people as those of Spain, were voluntarily adopted. They had their origin in the interests of European governments hostile to the cause of the colonies. But it was not this consideration alone that led to their permanent enactment. The established policy of the government was that of peace with all nations. To maintain this policy it waived, both at home and abroad, interests to which, under other circumstances, it would have resolutely adhered. The declarations of Washington upon this subject are too familiar to require repetition. They were accepted by all his successors, and perhaps in no instance more forcibly and justly expressed than by Mr. Adams in 1826, in setting forth the objects of the Panama mission. "The great rule of conduct given us by the father of his country in his farewell address, in regard to foreign nations," he said, "is in extending our commercial relations to have with them as little connexion as possible." "The counsels of Washington," said Mr. Adams, "in that instance, as in all the counsels of wisdom, were founded upon the circumstances in which our country and the world around us were situated at the time when it was given; that the reasons assigned

by him for his advice were that Europe had a set of primary interests which to us had none or a very remote relation; that hence she must be engaged in frequent controversies, the causes of which were essentially foreign to our concerns; that our detached and distant situation invited and enabled us to pursue a different course; that by our union and rapid growth with an efficient government the period was not far distant when we might defy material injury from external annoyance; when we might take such an attitude as would cause our own neutrality to be respected, and with reference to belligerent nations might choose peace or war as our interests, guided by justice, should counsel." The same principle was stated by John Quincy Adams, as Secretary of State, when replying to the application for active aid to the cause of Greek emancipation and liberty in 1823.

"The policy of the United States with reference to foreign nations has always been founded upon moral principles and natural law—*peace* with all mankind. From whatever cause war between other nations, whether foreign or domestic, has arisen, the unvarying law of the United States has been peace with both belligerents. From the first war of the French revolution to the recent invasion of Spain there has been a succession of wars, national and civil, in almost every one of which *one* of the parties was contending for liberty or independence. To the first revolutionary war a strong impulse of feeling urged the people of the United States to take sides with the party which at its commencement was contending, apparently at least, for both. Had the policy of the United States not been essentially pacific, a stronger case to claim their interference could scarcely have been presented. They nevertheless declared themselves neutral, and the principle then deliberately settled has been invariably adhered to ever since." It was upon this principle that the government acceded to the united demands of European nations in its legislation upon the subject of neutrality in 1818. It was not, as asserted, because every affection of our government was wrapped up in Great Britain, nor that we were legislating in favor of Spain, as Mr. Clay declared. This legislation was in harmony with the established policy of the government, the purpose of which was to disconnect ourselves from other nations in all matters of war.

Another consideration gave force to this view of public duty. It had been the established policy of the government, in submission to the views of the dominant political party of that day, to dispense with armies, navies, and fortifications, leaving our commerce and even our territory to the protection of a just, moderate, and pacific public policy. President Monroe was the first to depart from this theory. He urged as strenuously as the federalists had done, the fortification of our coast and frontier, the organization of an army competent to garrison and defend the frontier, and to meet the first invasion of a foreign foe. He advocated a navy, sufficient to maintain with dignity the neutrality of the United States, and secure our property on the seas from spoliation, and become a powerful engine of annoyance to public enemies. It was at this period that official declaration of the doctrine was made which now bears the name of President Monroe, and has become the recognized policy of the American government. It appears, therefore, that the early policy of the government was the result of the situation of the country, and that the deficiency in armies, navies, fortifications, and the implements of war, had as much to do with the formation of its policy as the opinions of its legislators, executive officers, or the people. It is also apparent that in urging the creation of armies, navies, fortifications, the implements, and the study of the science of war, especial consideration was given to the purpose of establishing a principle of neutrality, consistent with the dignity of the country, and protecting the continent against the encroachments of European powers and monarchical or imperial institutions of government.

It was, nevertheless, a wise and just policy adapted to the condition of things at that time, and deliberately chosen, but with a view "to the time not far

distant when by union and rapid growth we might choose peace or war with belligerent nations, as our interests guided by justice should counsel."

It was a policy of isolation and estrangement from foreign nations, rather than of mere neutrality, which, when interpreted by the law of nations, means nothing more nor less than strict impartiality between those at war with each other.

It was this principle which enabled the administration of Washington and the people, to harmonize upon a measure operating in favor of nations hostile to us, against patriots who were not only friends but sedulously following our example. The government accepted it, not because it was just, but necessary, and the people, because they shrank from presenting to the world the spectacle of a government at peace, and a people at war with other nations. It is of such dust that men capable of freedom are made. We do not hesitate to declare that there is now no desire to change this policy of peace with all nations, but it must be admitted that the time is approaching, if it has not come, when the statutes affecting our neutral relations may be put upon a footing of equality with those of other governments. It is scarcely necessary or just that the people of the United States should, by their own act, be put under obligations and subjected to prohibitions such as rest upon no other nation, or that their personal rights and commercial privileges should by themselves be declared inferior to those enjoyed by people of other parts of the world.

The English statute of 1819 does not permanently prevent or punish crime. It depends upon the will of the Crown. The sovereign may suspend its operations at pleasure. It is, indeed, effective by its own terms only when the acts it prohibits are not licensed. Its restrictions upon British subjects are nominal compared with those of the American statute. This is the more noticeable because its enactment was in some measure a result of the adoption of the American statute of 1818. Lord John Russell says, in his correspondence with Mr. Adams upon the subject of the depredations of the British pirate *Shenandoah* upon our commerce, that "the American statute of 1818 was, in fact, so far as it was considered applicable to the circumstances and institutions of the country, (England,) the model of our foreign enlistment act of 1819." (Correspondence respecting the *Shenandoah*, page 301.) How far its imperfect provisions were enforced during the rebellion, and what advantage we derived from the halting imitators of our example by England, the American commerce swept from the seas or compelled to take shelter under the British flag can answer.

The law of France provides that if any citizen shall, by acts of hostility against foreign governments not approved by the government, expose the state to reprisals or a declaration of war, he shall be punished by banishment; and if war follows such an act, then by deportation, with loss of all rights of citizenship. If any citizen of France, without authority of the Emperor, enters the armed service of foreign governments, or joins any foreign military organization, he forfeits his citizenship, which he cannot regain except upon the conditions prescribed for the naturalization of foreigners. Deportation is a form of punishment preserved from the earliest ages of antiquity. It consists in perpetual banishment at some place designated by the government beyond the limits of the empire; or if no place has been designated, then in prison. It is equivalent to civil death.

The American statute is not demanded by international or natural law. According to these systems neutrality is impartiality. A State in virtue of its sovereignty has an inherent and indefeasible right to remain neutral as between other States at war. This neutrality implies, on one part, impartiality; on the other, inviolability. The State cannot inflict, and is not bound to suffer injury. It is a temporary condition, incident to the situation, and not necessarily permanent. An attempt to impose upon a people permanent neutrality, especially if that word is interpreted to mean, as in our legislation it does, an estrangement, abscision, and isolation of the State from other nations, is opposed to the true

principles of public morality and law. To make such a system permanent is impracticable. It can be justified only by a regard to the temporary condition of States by which it is enacted. The highest interests of civilization demand that the liberties and rights of neutrals should be extended, and the privileges and powers of States at war diminished. Upon the recognition of this principle depends the progress of nations, the independence of States, the liberties of the people. To restrict the rights of neutrals, and enlarge the power of belligerents, is to reject the teachings of Christianity and the improvements of civilization, and to return to the doctrines of uncivilized nations and the practices of barbaric peoples.

In reviewing the statute of 1818 we cannot escape the conclusion that it is founded upon an opposite and unsound philosophy; that it disregards the inalienable rights of the people of all nations; that it was imposed upon the country by considerations affecting exclusively the political interests of other nations; that it criminally restrains the rights of nations at peace for the benefit of those at war; that it was intended to perpetuate the supremacy of favored nations on the sea. It properly belongs to another age, and is not of us nor for us.

It was in deference to the conditions then imposed that American legislators thought it expedient to divest this country of rights enjoyed by others, indispensable to the development of the strength of republican institutions and the American States, and to inflict upon their people the irreparable injury of depriving them of privileges necessary to their private prosperity and the preservation of the liberties of their race. It is incredible that it should have been thought necessary permanently to suppress, as crimes on the part of our citizens, transactions which are not punished as crimes elsewhere, for the benefit of nations inimical if not hostile to us, and against States struggling for independence and liberty in emulation of our own example.

No; these concessions to the peace of the world were made for the time when they were enacted. It was an opportune and patriotic policy. The preservation of the republic was the first duty of our fathers, as it is now ours. It is destined, if sustained, to be the grand disturber of the right divine of kings, the model of struggling nations, the last hope of the independence of States and of rational liberty.

To the example and precept of our fathers we still adhere. But if the time has come for which they waited and worked, or whenever it shall come, in which the rights of the country can be asserted, its interests protected without departure from the established policy of our government, which we indorse without hesitation, and to which we adhere without reservation, it is our opinion that the opportunity should not be lost. And we therefore recommend, as incident to this duty and this day, a thorough revision of the statutes affecting our neutral relations with other governments, and the enactment of such laws as will limit its prohibitions and restrictions to those imposed by the laws of nations, the stipulations of treaties, the reciprocal legislation of other governments, the freedom of commerce, the independence of States, the interests of civilization, and that will curb the power of nations at war, and strengthen and extend the rights of those at peace.

The committee has had under consideration the bill referred by order of the House on the 20th June, providing that the statute of 1818 shall not be so construed as to prohibit citizens of the United States from selling vessels, ships, or steamers built within the limits, or of materials and munitions of war the growth or products thereof, to inhabitants of this country or to governments not at war with the United States.

The statute of 1818 enacts that "any person who shall fit out or arm, or attempt to fit out or arm, or be concerned in fitting out or arming, any ship or vessel, with intent that such ship or vessel shall be engaged in the service of

any foreign prince or state, or any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any prince, or state, or of any colony, district, or people with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and fined not more than \$10,000, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores procured for the building and equipment thereof, shall be forfeited."

It requires that owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bonds, with sufficient sureties, in double the amount of the value of ship, cargo, and armament, that she shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

It requires collectors of the customs to detain any vessel manifestly built for war purposes and about to depart the United States, of which the cargo, crew, "or other circumstances" shall render it probable that such vessel is intended to be employed by the owner to cruise or commit hostilities upon the citizens or property of any foreign State, or of any district, colony, or people with whom the United States shall be at peace, until the decision of the President be had thereon, or until the owner shall have given bonds and security required by the tenth section of the act. It also makes citizens within the United States responsible for the acts of foreign subjects who are beyond the jurisdiction of the United States. These stringent provisions are not now necessary for the reason given for the passage of the law, to prevent the exportation of arms by force, in such a manner as to complicate the government with nations at war with each other but at peace with the United States; neither is it demanded by any just interpretation of our duty to other nations under the law of nations, treaty stipulations, or reciprocal municipal regulations. The repeal or modification of these provisions will be, in the judgment of your committee, for the interest of public peace. Their effect now is to perpetuate the subjugation of States without naval force to the will of dominant maritime nations. It may reasonably be assumed that the late bombardment of the South American cities on the Atlantic coast by Spain, which has been universally condemned, would not have occurred but for the stringent execution of the provisions of this law by our government. Had the South American governments been supplied with materials for defence, from the abundant resources of the United States, this invasion of the American waters by the Spanish navy would not have been contemplated. Ships are articles of commerce; they are in no liberal or just sense contraband of war, nor are the materials of which they are made. The recent improvements in naval architecture are such as to diminish the distinctions between merchant vessels and ships-of-war, and to facilitate the adaptation of one to the purposes of the other. A strong-built, swift-sailing merchant vessel or steamer could be made with a single gun an effective war vessel. To prohibit our citizens from building such vessels or selling materials for their construction at a time when all nations except our own are at war, because they may be employed for hostile purposes by foreign subjects, or to demand bonds in double the amount of vessel, cargo, and armament, and to require officers of the customs to seize and detain them whenever cargo, crew, or "other circumstances" shall render probable a suspicion that they are to be so used, and where American citizens are part owners only, is substantially to deprive them of their rights to engage in the construction of vessels or to furnish materials therefor. Considering the limitless capacity of the country in this respect, it is a privilege that ought not to be surrendered except upon grounds of absolute necessity and justice.

The laws of war upon land have been materially and happily modified in the progress of civilization. Nations are no longer compelled to become parties to war. The rights of neutrals have been steadily enlarged; and the rights of non-combatants, both of person and of property, respected. War is now waged against governments, and not, as formerly, against persons. The most enlightened maritime nations have endeavored to modify and reform the laws of war upon the sea as upon the land. Great Britain is the only power that resists the recognition of the rights of neutrals upon the sea as upon the land. In this, however, the principles she asserts are not enforced in her practice. To this extent she conforms to the spirit of the age. Russia, in 1780, asserted the doctrine of armed neutrality, and threatened war against any power that violated the principles asserted by her in behalf of neutral nations. These declarations were chiefly:—that the flag covers the cargo, (contraband excepted;) that neutrals are not subject to the right of search; that articles contraband of war must be limited to objects used exclusively for purposes of war. They asserted the right of armed convoy for merchant vessels, and that blockade to be recognized must be effective. At a later period the northern maritime nations joined Russia in proclaiming the rights of neutrality as set forth in the declaration of the armed neutrality, which had been earlier asserted by France. The United States made war upon Great Britain in support of the same principles in 1812, and, as Napoleon the First said in the most memorable of his addresses to the French Chambers, vindicated and preserved the freedom of the seas when it had been abandoned by the rest of the world.

Notwithstanding the sacrifices made by the most enlightened maritime nations to mitigate the laws of war upon the sea, the necessary reform is not yet fully established. Great Britain, in theory at least, maintains the ancient and unjust pretensions of belligerents upon the sea, denying that the flag protects the merchandise, condemning as contraband of war materials used in the construction of vessels, coal, wood, hemp, and tar, as well as arms, guns powder, &c., declaring that they ceased to be merchandise, and were contraband of war; denying the convoy of merchant vessels, and asserting the right of search and the theory of paper blockades. It is by the assertion of principles which she does not undertake to enforce that she seeks to maintain her supremacy on the seas. To these pretensions all the maritime nations are opposed. It is only by monopolizing the naval and commercial forces of the world that she can maintain these unjust pretensions. Whatever increases the maritime force of other nations opens the seas of the world to commerce, which is the handmaid of peace. It is due to the independence of nations, as well as to the freedom of the seas, that the United States should assist in this great work, and the repeal of these provisions cannot but contribute in an important degree to this object of universal interest.

It may be said that the modification of our statutes of neutrality will absolve Great Britain from claims made upon her for the destruction of our merchant vessels during the late civil war. There is no ground for this apprehension. The modification proposed affects the future and not the past relations of the United States with other nations. No change in our statute laws can release Great Britain from responsibility to this government, incurred under previously existing relations.

Our claim is for American ships destroyed by British vessels in violation of her own statute of neutrality—the foreign enlistment act of 1819, enacted we are told upon the model of our statute of 1818. Our complaint is based upon the fact that before one drop of blood was shed in any encounter upon land, or in any engagement except the affair at Fort Sumter; when not an effective insurgent vessel floated upon the ocean, she recognized the rebels as belligerents on the sea, and allowed pirate ships to escape from her ports to prey upon and

destroy our commerce, and appropriated to herself the advantages of this unjust proceeding. We complain that while our government enforced the statutes of 1794 and 1797 upon the demands of Great Britain, our enemy, against the French, our friends : and in 1817 and 1818 enacted new laws at the solicitation of Spain backed by Great Britain against the South American republics, she disregarded her own statute law of 1819, which was not enforced in our favor, but in despite of its provisions British ships with British armaments and British crews were allowed to depart from and to refit at British ports in every part of the world until the American merchant flag disappeared from the seas. It cannot be expected that we shall long maintain a policy that, while it destroys cherished American interests, operates only in favor of enemies and against friends. Great Britain cannot absolve herself from her obligations upon the pretext that we choose to discontinue such unequal and unprofitable relations with her government.

The reform of our neutrality laws is recommended in the spirit of peace, and with no desire to disturb existing friendly relations with other nations. We prefer to strengthen rather than destroy. The marvellous changes wrought in the condition of the country have worked no change in the spirit of our people. They look now, as heretofore, to universal industry for prosperity and power. There are no advantages, territorial or otherwise, incident to the possession of mere political power, that will compensate them for the loss of that industrial spirit which is the stimulant of national activity and the compensation of individual toil—the highest reward of the noblest ambition. There is no outward advantage that will not fall to us in due time. Individuals may be impatient, but the nation never. Violence imperils, anarchy and despotism destroy the foundations of present and prospective advantage. We most desire to avoid the perils that have been fatal to republics, ancient and modern—the policy that substitutes might for right, and invests with power those who are indifferent, if not hostile, to the interests of masses of men. But while we prefer peace to war, and find our advantage in maintaining peace as against war, it is no longer from necessity. If we are compelled to choose between the sacrifice of our rights and an appeal to the arbitrament of war, there can be no doubt about the decision. We can no longer stand bail for the peace of the world. We have stood guard for other nations long enough. When the maintenance of national honor is identified with the defence of principles essential to the independence of States and the progress of civilization, we cannot falter on a course marked out for us by duty and destiny.

From the foundation of our government we have given evidence of our desire for peace. The statutes of 1794 and 1797 enabled Washington to disregard public opinion and maintain neutrality between France and England. The act of 1818 did the same for Spain in the contest with her colonies in America. We stepped forward to the aid of France, with men and money, when insurrection first threatened St. Domingo, taking upon ourselves the risk of unauthorized aid when delay would have been denial of assistance. We did not recognize the insurrection as civil war; and when France solicited the prohibition of commerce with St. Domingo, her request was granted. The government suppressed hostile armaments in Kentucky against Louisiana before its cession. When the South American States had achieved their independence and sought the conquest of Cuba, the United States, by adhering to its long established policy and faithfully enforcing its laws, maintained the authority of Spain, although it would otherwise have held that fertile and much coveted island in its grasp. Who fails to perceive now that the possession of Cuba by Spain depends upon the fidelity with which we adhere to the policy of our fathers, and which maintained her authority in Cuba against Mexico, and Colombia, in 1824?

The government declined to aid Greece in her struggle for independence and

liberty, although it was urged by the united voice of the people, adhering, as Mr. Adams said, "to its constitutional duty, clear and unequivocal." In 1838, executive proclamations and more stringent statutes even were published to protect Great Britain against the rebellion of that year in the possession of the Canadas. We enforced the neutrality act of 1818 against the efforts of the German States to organize a navy in the war against Denmark in 1852, and detained in our ports steamers purchased for that purpose of our people.

The recent memorable invasion of Canada offers a signal exhibition of the spirit and character of our government. Great Britain has given us no cause to respect her sense of justice or her regard for right. Our people, who derive from her their ideas of language, liberty, and law, institutions and religion, might justly expect consideration, if not favor. But, with indecent disregard of our situation, she has not lost an opportunity to embarrass us. She planted slavery in America for her own selfish interests. The profits of the African slave trade with this country were the foundation of many of her colossal private fortunes. Having fastened it upon us, she precipitated the question of its abolition upon us when abolition threatened our destruction. She ridiculed, resisted, and denounced emancipation, when emancipation was necessary to our existence as a nation. She gave her sympathy to rebels, of whose confederacy slavery was to be the headstone of the corner. She countenanced a rebellion of which the only effect was to sacrifice precious blood, in great part of her own kith and kin. She lent them the skill of her mechanics, of which the rebels had nothing, and without which war was impossible, thus making her working men supporters of a cause the triumph of which was the degradation of labor. She gave to the rebels her sympathy as long as it was serviceable, and sold to them her power as long as they could pay for it.

And when, in adherence to our own policy, by reluctant, questionable, and even violent execution of our laws, we preserve to her, possessions the loss of which would be the precursor of other calamities and reduce her to the rank of a subordinate power, against a race to which our country is deeply indebted and which has suffered for six centuries inexcusable and ineffable wrong, she mildly approves our conduct as better than she had a right to expect.

The institutions and traditions of the American people compel sympathy for the humblest of the human family when struggling for liberty. Their literature is rank with the spirit of oppressed races grappling with tyranny and nations fighting for independence. Their faith in these ideas has been strengthened by the results of their own struggle. It is impossible for them not to wish well to the cause of patriots everywhere. They gave their good wishes to Switzerland, France, Spanish America, Poland, Greece, Hungary, and every country that sought relief from tyranny. They cannot withhold from Ireland an expression of their hopes for the restoration of its independence. They believe, with Pitt, that Ireland is entitled to the same privileges as England, and Irishmen to the same rights as Englishmen. They believe, with Wilberforce, that England owes reparation to Ireland.

Mr. Grote, the classic historian of Greece, remembering that mythologists recognized three Jupiters, sees, in reviewing English history, *two* Englands; one noble, wise, and strong, one sordid, brutal, insensible to right, and indifferent what is done in its name. "For six centuries," he says, "the bad England has kept vigil for Ireland while for the rest of the world it has generally slept." We cannot affirm that it has slept for America, but we agree with him that the general fact is attested by European and, we may add, American opinion, which reveres English history at large but regards the Irish part of it with resentment, wonder, and scorn. We believe with him that "England cannot study the history of Ireland without losing her self-respect, nor the character of its people without advantage."

The sympathy we extend to all nations struggling for independence is strength

ened in this case by a sense of obligation due to these people for their assistance in the development of our country. But independent of any consideration of this character, if to our sense of their wrong we add the recollection of our own, the popular interest in their favor is sufficiently explained. The intervention of our government under such circumstances is proof of our fidelity to our obligations to other nations, and ought to satisfy the world that we have no desire to disturb its peace. It is rather to maintain our relations with other nations that we ask the favorable consideration of the measures herewith reported.

REPORT OF THE MINORITY.

The undersigned, while concurring in the necessity and propriety of a revision of the neutrality laws of the United States, are unwilling to recommend the important changes proposed by the committee without more careful and mature deliberation than it is possible, at this late stage of the session, to bestow upon the subject. They therefore recommend the adoption of the following joint resolution in place of the bill reported by the committee :

Resolved by the House of Representatives, (the Senate concurring,) That a joint committee of three members of the Senate and six members of the House of Representatives be appointed to revise the several statutes affecting the neutral relations of the people of the United States with those of other nations, and to consider and report what legislation is necessary to secure to the people of the United States the rights enjoyed by other nations ; to secure the largest liberty of intercourse and trade, consistent with permanent peace, and to harmonize the statutes of the United States upon this subject with those of other nations, and with the progressive spirit of the age.

HENRY J. RAYMOND.
J. W. PATTERSON.

J. T. JONES.

[To accompany bill S. No. 122.]

JULY 26, 1866.—Ordered to be printed.

Mr. SIDNEY CLARKE, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred Senate bill No. 122, appropriating the sum of \$6,700 for the relief of J. T. Jones, an Ottawa Indian, report as follows :

On the 9th of April, 1858, the Secretary of the Interior ordered an investigation into the claims previously made by the said Jones, for depredations committed on his property by white citizens of the United States, on the night of August 29, 1856. This order was transmitted through the Commissioner of Indian Affairs and superintendent to the agent of the Ottawas, and he was instructed to take all the evidence offered in the case, obtain all the facts possible, and transmit a record of the same to the department.

The report of the agent was made July 28, 1858, and states that he excluded all Indian witnesses in the case, but that the testimony of competent and reliable whites established the losses as follows : dwelling and other property burned, \$6,000 ; gold and silver taken, \$700 ; injury to business, \$1,000—total, \$7,700. This being less than half the amount claimed by Mr. Jones, the superintendent recommended the payment of this amount, but the Indian Office declined making any allowance for the damage done to the business of Mr. Jones, and recommended an appropriation of \$6,700.

It appears from the testimony that these depredations were committed during the border troubles of 1856, by a considerable body of armed men, who came and went in the night. They not only plundered and destroyed the property, but made attempts upon the life of Mr. Jones. The Indians had refused to take any part in the affrays of that period, and were unable to defend themselves, while the government afforded them no protection. Mr. Jones has been pressing this claim for years, and three bills providing for its payment have passed the Senate, but never been considered by the House.

Believing the claim to be just, and that the United States are legally holden for its payment under the 16th section of the intercourse act of June 30, 1834, the committee recommend the passage of this bill.

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GEORGE N. CARLTON.

JULY 26, 1866.—Ordered to be printed.

Mr. HOOPER, from the Committee on Banking and Currency, made the following

REPORT.

The Committee on Banking and Currency, to whom was referred the report of the evidence obtained by H. A. Risley, supervising special agent of the Treasury Department to investigate the accounts and official transactions of George N. Carlton, late special agent and acting surveyor of customs at Memphis, Tennessee, and designated a depository of public moneys, report :

That there has not been time for a full investigation of the subject, and they submit to the House the accompanying papers, which furnish all the information obtained by the committee, with the request that they be printed as part of this report.

TREASURY DEPARTMENT, *July 25, 1866.*

SIR: I have the honor to transmit herewith, for the consideration of Congress, through your committee, a printed copy of the examination made in August last in relation to the defalcation of George N. Carlton, late special agent and acting surveyor of customs at Memphis, Tennessee, a designated depository of public moneys, together with a copy of the report made to me at the time by Mr. H. A. Risley, supervising special agent of the treasury, who was charged with the investigations and with the care of the government interests in the premises, and also a more full statement now prepared by him by my direction, all of which papers are respectfully submitted, and intended to give full information of the transactions concerning which inquiry is made by you.

Very respectfully, your obedient servant,

H. McCULLOCH,

Secretary of the Treasury.

Hon. SAMUEL HOOPER,

Acting Chairman of Committee on Banking and Currency.

TREASURY DEPARTMENT, *October 31, 1865.*

SIR: In the matter of the deficit in the accounts and returns of George N. Carlton, surveyor, &c., at Memphis, Tennessee, I have the honor to report :

That in pursuance of your instructions by letter of July 26th ultimo, (a copy of which is transmitted for convenient reference, marked A,) I proceeded to Mem-

phis, taking with me from Buffalo as legal adviser Chauncey Tucker, esq., and obtained from Mr. Carlton, in United States treasury notes and bonds, the sum of \$575,863 80, to wit:

United States treasury notes, proceeds of sale by Mr. Ainslee, in New York, of the last seven-thirty bonds subscribed for through Mr. Carlton.....	\$248,000 00
United States bonds remaining in Mr. Carlton's hands, of the \$20,000 subscription of June 13, 1865, \$17,250. United States treasury notes in same package, \$100.....	17,350 00
Moneys and checks growing out of restricted commercial intercourse, customs, internal revenue, &c., a particular account of which has been rendered by Mr. Carlton to the proper accounting officers.....	310,518 80
	575,868 80

In pursuance of your direction by telegram of August 9, I sent by Adams Express, on the 10th August, the bonds and moneys (except \$1,500) to the First National Bank at Cincinnati, and so advised you by letter of that date. The money and bonds were received at the bank, and placed to the credit of the United States Treasurer on the 16th August, as appears by the cashier's letter of that date, which is herewith transmitted, marked B.

There was still a large balance against Mr. Carlton which he represented was owing to him, or to the government, by the Commercial Bank at Memphis, or by Parkman, Brooks & Co., of that city. He represented that he had been induced by J. W. Page, jr., the president of the Commercial Bank, to issue certificates of deposit on account of subscriptions to government bonds from time to time, and to accept temporarily Mr. Page's checks on the Commercial Bank instead of money. They were Mr. Page's individual checks, but the certificates of deposit were issued in favor of the Commercial Bank. The checks so received from time to time amounted to \$556,945. In May last, the checks of Page, so held by him, were given up and cancelled, on Carlton's receiving like checks, in date and amount, of Parkman, Brooks & Co., which Carlton still held, and which represented the balance against him in favor of the government. He gave as a reason for receiving these checks and issuing the certificates in the first few instances, his great confidence in Mr. Page as a man of means and integrity, and his pride and interest in selling such a large amount of government securities in Memphis; and after the debt became large, and Mr. Page embarrassed, he allowed a continuance of the subscriptions, to provide means to pay drafts drawn against previous ones, and with the hope that Mr. Page would be able to pay all up without exposure or loss to the government. He exchanged the checks for those of Parkman, Brooks & Co., under the belief that Page was a member of the firm, that the firm were more responsible than Page, and the security would be better for the government.

The Commercial Bank, and the store of Parkman, Brooks & Co., had been closed by military order, on the application of Mr. H. G. Root, special agent of the Treasury Department, who had preceded me; and Page, Parkman & Brooks had been placed under arrest, but had been released on giving bail for their appearance, and that no transfer of property should be made by them.

Mr. Tucker and I consulted as to what had better be done under the circumstances.

The government held three several bonds against Mr. Carlton, conditional for the faithful discharge of his official obligations, and the accounting for all public moneys he might receive:

1. Bond dated October 16, 1863, as a designated depository of public moneys, in the penalty of \$50,000. The sureties in this bond are responsible.

2. Bond dated October 17, 1863, as special agent and acting surveyor of customs, in the penalty of \$20,000.

3. Additional bond, dated April 12, 1864, as special agent and acting surveyor of customs, penalty of \$100,000.

The sureties on the last two bonds I found of doubtful responsibility. The accounts of Mr. Carlton as special agent and acting surveyor were square, or nearly so; the deficiency was in his account as depository of public moneys. The only reliance of the government for recovering the large deficiency appeared to be upon Mr. Page, the Commercial Bank, Parkman, Brooks & Co., Mr. Carlton, and the sureties of his official bond as depository of public moneys, the penalty of which is only \$50,000. Carlton had nothing. The credit of the Commercial Bank had been much impaired; Mr. Page and Parkman, Brooks & Co. had been regarded as men of means, but as having lost largely in cotton operations, and as now being largely insolvent. The Commercial Bank claimed that it was in no way connected with Page and Carlton's transactions, and in no way liable to the government in any amount whatever. Page claimed that he had been released from all liability, his checks surrendered, and those of Parkman, Brooks & Co. received in their stead. Parkman, Brooks & Co. claimed that they were not bound by the checks, as they had been executed in the absence of the members of the firm by an agent, who had been authorized to execute checks in regular course of business, but not in such an unusual transaction, and for so large an amount as these checks were given for. They had repudiated the checks immediately on learning of them, and sent written notice that they did not regard themselves liable or bound by them.

It was evident that all the parties were in desperate circumstances, without the means of making any considerable payment or security. The money had been lost in cotton speculations, carried on in the name of Parkman, Brooks & Co., they claiming that Page was a partner, and to furnish means, and he denying it. He represented that he and the Commercial Bank were only the bankers of Parkman, Brooks & Co., without any interest except as such bankers; that all the transactions with Carlton had been at the instigation and for the benefit of Parkman, Brooks & Co., and all the proceeds had gone to their credit and been drawn out by them. Litigation would be necessary to establish any claim against any one except Carlton and his sureties. There were no courts in Memphis, and there was no United States judge nearer than Knoxville, a great distance, with broken railroad communication.

Page and the directors, stockholders and depositors in the Commercial Bank were clamoring against the military usurpation, when the government had no claim or evidence of indebtedness, and General Smith, commanding the department, felt himself exposed and censured, perhaps justly so. Our best information was that the bank was insolvent and could not pay its depositors and redeem its circulation. For the purpose of ascertaining facts, and determining as to the liability of parties and their ability to pay, an examination of Mr. Carlton, Page, Parkman, Brooks and other gentlemen was had before me, and the depositions taken are herewith transmitted, marked C. The examination satisfied me—

1. That Mr. Carlton had acted weakly, but not corruptly. He committed a grave error in allowing and aiding Page to get the possession of bonds before actual payment. The transaction was a fraud upon the government, and all concerned in it are liable in a criminal prosecution; but I do not believe Carlton had any intention of defrauding the government, or any idea there would be any loss. He is, of course, liable for the full amount of the deficiency, and the sureties in the bond given by him as depository of public moneys are liable to

the extent of the penalty, viz., \$50,000; and although the payment of that amount will embarrass and probably ruin them, I believe, from all I could learn, that the amount can be recovered from them.

2. That Mr. Page and the Commercial Bank were liable for the full amount of the deficiency, and Page liable in a criminal prosecution for defrauding the government. The bank actually received the proceeds of sales of the seventy-three bonds, out of which the deficiency grew. Mr. Page, its financial officer, if not the cashier and directors, knew the manner in which they were obtained of Carlton, and was a party to the unlawful transactions. The bank derived no title to the bonds. Page's account of the matter does not relieve them; they had the money and applied it in payment of Parkman, Brooks & Co.'s overdrafts, all of which was fraudulent and void. Even Parkman, Brooks & Co. disclaimed it, and refused to have their debts paid in that manner. So I had no doubt of the *liability* of Page and the bank; but I believed they were irresponsible. An examination of the bank's books and statements of its financial officers showed—

Cash on hand.....	\$212, 000
Due from other banks.....	20, 000
Bills receivable and overdrafts.....	60, 000
Banking-house.....	30, 000
	322, 000
Due depositors.....	\$250, 000
Circulation.....	25, 000
Due other banks.....	60, 000
Stock.....	100, 000
	435, 000

It had bonds of the State of Tennessee to the amount of \$50,000 deposited with the State authorities to secure its circulation. The comptroller ran away with the bonds at the beginning of the war, and they are supposed to be lost.

From this exhibit it was apparent that no great amount of the deficiency could be recovered from the bank. In the first place, there would be a long litigation to establish its liability. In the mean time the credit of the bank would be prostrated and its assets dissipated and sacrificed. The government had gained nothing by the military seizure. They could gain no priority by attachment proceeding, as all the creditors of the bank would come in pro rata. The government, in case of extreme measures, would have been denounced as having ruined the bank.

Depositors, many of them small traders and women, would have clamored and beset Congress for relief.

I had no doubt of being able to establish a claim against the bank, but I could not discover how any considerable sum could be collected from it, and I compromised the claim by getting \$75,000, secured by the bonds of J. W. Page, jr., William L. Folwell, John Ainslee, and William J. Porter; one-half payable in one year from date, and one-half in two years from date, with six per cent. interest, and dated August 14, 1865; which bond is now in my possession awaiting your direction. The sureties on the bond are all men of substantial wealth, and I have no doubt the \$75,000 may be regarded as well secured, and, in my opinion, it is more than could have been recovered after a troublesome litigation.

Messrs. Parkman, Brooks & Co. denied the authority of the clerk who signed

their names to the checks for \$556,945, Carlton received from Page, and repudiated the transaction altogether.

The clerk represented that he was authorized to draw checks in their name in transacting the current business of the firm. That when he was applied to by Page to give these large checks he hesitated; that he supposed Mr. Page to be a member of the firm of Parkman, Brooks & Co., and when directed by Mr. Page to make the checks he did so, but he always doubted his authority.

It was a question of doubt whether any liability could be established against Parkman, Brooks & Co., and of still greater doubt whether they had any responsibility. Mr. Parkman had long been a tobacco merchant at Memphis, and regarded as a good business man, and a man of means. The other members of the firm were young, somewhat reckless, and without means. They were supposed to have lost heavily in cotton transactions, and to be wholly insolvent. The best information I had obtained led me to the conclusion that a judgment against them, if one could be recovered, would be of no considerable value. I obtained from them notes and securities as follows:

1. Note dated August 14, 1865, payable with six per cent. interest in six months from date.....	\$6,000 00
2. Note with date, &c., as above.....	20,000 00
3. Note, same date, payable four months after date, with six per cent. interest.....	30,000 00
4. Note, date, interest, &c., as above.....	94,000 00
5. Note dated August 16, 1865, payable in six months, with same interest.....	51,003 12
Total	<u>201,003 12</u>

The note for \$20,000 is secured by a conveyance to Chauncy Tucker, in trust of Mr. Parkman's homestead, in Jackson, Tennessee, some twenty acres of land under high cultivation, with fine buildings, and believed to be fair security for the debt.

The note for \$30,000 and the one for \$6,000 are secured by an assignment in trust to Mr. Tucker of a tobacco factory in Tennessee with a large quantity of leaf tobacco. Mr. Tucker employed P. P. Learned as agent to manufacture and dispose of the tobacco, pay current expenses, including a compensation agreed upon for his own service, and account for the balance to apply on this debt. We were made to believe that this note was well secured, and the amount would be realized out of proceeds of the tobacco.

The note for \$51,003 12 is secured by pledge of the interest of Parkman, Brooks & Co. in certain steamboats and cotton in the hands and under control of George M. Gill, and by Gill's stipulation to hold and apply the proceeds of sales of the boats and cotton in payment of this note. I believe the amount of this note will be realized through the property so pledged.

The \$94,000 note was secured as follows:

On the 14th August I made a conditional contract with F. W. Brooks for collecting and delivering to treasury agents certain lots of cotton and other property captured, abandoned, surrendered, or confiscable, on terms and conditions expressed in the contract, (a copy of which is herewith transmitted,) and the share or interest of said Brooks in the property, or proceeds of property, secured and delivered by him under the contract, over and above what might be necessary to pay the actual expenses of securing and transporting the same, is to apply and be allowed on the notes, amounting to \$150,000, so given by Parkman, Brooks & Co. The contract being an usual one, and made by me, as I stated to them, without proper authority, was subject to approval by the Secretary. It was submitted to him for approval on my return, and as it was

in conflict with some new instructions then recently issued in reference to the subject, the Secretary declined to continue it in force, and directed me to notify Mr. Brooks that it would cease to have any effect after the 20th August, which notice was duly given, and is acknowledged to have been received by him. He reports considerable property delivered to agents, and that he will be able to deliver under the contract, and it is believed that after adjustment of the matters between him and the government under this contract, the whole amount of the notes given by Parkman, Brooks & Co. may be realized.

The securities received by me and the official bonds of Mr. Carlton are all in my hands, except the deed of trust and papers connected with the tobacco factory and tobacco, which are in the hands of Mr. Tucker, with whom I am in correspondence, and who will report to me all that is done, and account for all moneys received under the same.

It will be observed that there is a large balance against Mr. Carlton, amounting to some \$556,945, as he states the accounts, which do not vary materially from the accounts stated in the department.

He did all in his power to aid in disclosing the facts and recovering from the parties who received and had the benefit of the government securities. There is no evidence that he personally received or expected any benefit, excepting his lawful commissions. He has heretofore maintained an excellent character, and respectable gentlemen in Memphis have confidence in his integrity. I believe that he was the dupe of others in the transaction. He is undoubtedly poor and unable to pay anything. I do not see that a judgment against him will be of any value. It is for the Secretary to determine what, if any, proceeding shall be taken against him; but believing, notwithstanding his great and almost criminal folly and weakness, that he is innocent of any fraudulent intent, I respectfully recommend a lenient course towards him. Any other will ruin him and distress his family, without compensating advantage to the public service.

An account of the expenses paid out and incurred by me in carrying out your instructions is respectfully transmitted, marked D, for the Secretary's approval.

Very respectfully,

H. A. RISLEY,
Supervising Special Agent.

Hon. HUGH McCULLOCH,
Secretary of the Treasury.

In the matter of the investigation into the accounts and official transactions of George N. Carlton, late special agent and acting surveyor of customs at Memphis, designated a depositary to receive payment of money due to the United States, before H. A. Risley, supervising special agent of the Treasury Department.

C. Tucker, counsel on behalf of the United States; T. W. Bartley, of Cincinnati, on behalf of the Commercial Bank; W. K. Poston, on behalf of J. W. Page; G. P. Foute, counsel on behalf of George N. Carlton; Chas. Kartreth, counsel on behalf of E. Parkman; E. Yerger, counsel on behalf of F. W. Brooks.

Deposition of George N. Carlton.

The said George N. Carlton, having been duly sworn that the evidence he shall give on the investigation pending before me, on behalf of the United States, shall be the truth, the whole truth, and nothing but the truth, deposes and says:

I was appointed a government depositary on or about the 5th of November,

1863. I was at the same time appointed special agent of the treasury to discharge the duties of collector and surveyor of customs. Immediately after I was appointed, I commenced depositing with the Commercial Bank of Tennessee, for the reason that I had lost the combination of my vault key and could not get into it. I continued depositing in this bank only a few weeks—I think three or four weeks.

The first transaction I had with Mr. Jesse W. Page, jr., was September 24, 1864. He was at the time president of the Commercial Bank. He applied to me to make a subscription of \$50,000 for the 7-30 United States bonds. I issued to him a certificate that the Commercial Bank had deposited to the credit of the Treasurer of the United States fifty thousand five hundred dollars on account of, and in exchange for, three-years seven and three-tenth per cent. treasury notes authorized by the act of June 30, 1864, to be issued bearing date August 15, 1864. (Form of certificate exhibited, marked A.)

For this certificate Mr. Page gave me his check for a like amount on the Commercial Bank. Whether the check was signed officially or not, I do not remember. I held the check for a few days, and then presented it to the bank for payment, and it was paid.

The next transaction was on the 12th October, 1864. This was a subscription for \$50,000 of the same character of bonds, and a like certificate of deposit was given by me, and a like check received from Mr. Page, and on presentation of the check it was paid, the same as in the first transaction.

The next transaction was on the 9th November, 1864. Mr. Page came to me and said, "Mr. Carlton, I don't like to have the Commercial Bank appear in the papers as a subscriber to the United States government securities." I replied, "That I was soliciting the subscriptions as a matter of patriotism, to help the Union and for the credit of Memphis, and it would do him no injury to have his subscriptions published." He replied, "That he did not like it; that he wanted to make another subscription, but would make it in the name of Mr. Ainslee." Mr. Ainslee was at the time cashier of the bank. I issued the certificate in the name of John Ainslee. His official character was not named in the certificate. This last subscription was \$50,000. The accrued interest was \$860. So the certificate was for \$50,860, and the certificate was delivered to Mr. Page, who gave me Mr. Ainslee's check for the amount, Page promising me he would see it paid. The check was drawn on the Commercial Bank of Tennessee. This check was subsequently paid by Mr. Page, who brought the money to my office and took it up. The date of payment of this check will appear hereafter.

On the same 9th of November, Mr. Page and Edward Parkman came to my office and said—one or the other of them, I don't remember which—that they wanted to subscribe for one hundred thousand dollars of the 7-30 bonds. Mr. Page remarked that Mr. Ainslee was going to New York that evening to receive the bonds on the \$50,000 subscription of that day, and convert them into money, and that they wanted to use more money, and wanted to make another subscription in the name of E. Parkman. I remarked that I had no objections. Parkman said he would go and get a check. He brought in his check for \$101,700, and I gave him a certificate of deposit like the previous one, of the form of which exhibit A is a copy, and also a copy of the marginal entry retained in my office, marked B, for the amount. The check of Parkman was drawn on the Commercial Bank of Tennessee, and was the individual check of E. Parkman. When Parkman brought in the check, I told him it would not do, and that I could not receive it until it was certified by the cashier of the bank to be good. Mr. Parkman said, Very well; I will go and have it certified. He shortly returned, stating that Mr. Page declined certifying that the check was good, because the transaction would have to be entered on the books of the bank, but he brought me a note from Mr. Page, in which Page stated that he had

declined certifying for the reasons stated by Mr. Parkman, but that he, Page, would protect the check. The note Page wrote me has been mislaid or lost. I have made diligent search for the note in the place where it ought to be and cannot find it. The contents of the note can be found by Mr. E. Parkman, I have no doubt. On receiving this note from Mr. Page, I was satisfied, and received the check from Mr. Parkman, and delivered to him the certificate of deposit. Mr. Ainslee left the same night with the two certificates for New York. A month or six weeks subsequently I was notified by the Treasurer that a draft had been drawn on me for funds, which notice I will produce, if necessary, hereafter, and I called on Mr. Page, at the Commercial Bank, immediately after receiving the notice, and informed him that I had been drawn upon for funds, and that I must have the amount of those checks. Mr. Page said, Very well; you shall have it. The draft of the Treasurer was not presented under a month or two. In the mean time I had said to Mr. Page, frequently, he must not fail to give me the amount of the two checks when the draft appeared, and he assured me he would do it, remarking, "I can go out and sell \$200,000 of exchange any day." I frequently, while expecting the draft, asked Page to give me the amount of the checks, but he said the money should be forthcoming when the draft appeared. The draft not having appeared, on the 6th day of February, 1865, Mr. Page came into my office, stating that he wanted to make another subscription to raise the means to take up the two checks. I replied to Mr. Page that I would issue no more certificates until the two checks were paid. Mr. Page said he would pay them. "Very well," said I, "bring me the money." Said I, "How much do you want to subscribe for?" He replied, "\$200,000," stating that he would bring in the amount of the other checks in course of an hour, which he did.

I then issued to him, on the 6th February, a certificate for \$207,000 (accrued interest \$7) in the name of the Commercial Bank of Tennessee, of which he was still president. He gave me for this his individual check on the Commercial Bank of Tennessee, for the same amount, \$207,000.

Mr. Ainslee, who was cashier of the bank, was sent to New York to receive the bonds and convert them into money, as I was informed by Mr. Page.

In less than a month I was drawn upon by the United States Treasurer for the whole amount, or nearly that, deposited with me. I can produce the notice of this draft if necessary, showing the amount. I called immediately upon Mr. Page for the \$207,000. He said it was all right; he would come round and see me about it. He did come round to my office the same day, and remarked, "I want to make another subscription to provide the means to pay the \$207,000." Said I, "Mr. Page, do you know what you are asking me to do? Do you realize that you are on my bond for \$100,000?" Said he, "Perfectly, Mr. Carlton, perfectly; I realize the state of affairs. We shall have a large cargo of cotton out of Red river and the Washita, upon which we shall realize a sufficient amount to pay this subscription, and I pledge you my honor that I will send Ainslee to New York, and that the proceeds of this subscription, every dollar of it, shall be applied to the liquidation of my check for subscription of the 6th February, '65, for \$2,070." I replied, "That it was very uncertain about their cotton operations; my experience had taught me this, and that I should decline doing it." Mr. Page says, "I am sorry, Mr. Carlton, that you don't appreciate the situation of affairs." I replied, "That I thought I did fully appreciate the situation of affairs; that I was getting alarmed, and that I would see the whole concern to the devil before I would issue another certificate, as requested." This was about 4 o'clock p. m. Mr. Page left, and I went to dinner. While at dinner Mr. Ainslee called at the house; stating that he would like to see me. I met him in the parlor. He apologized for calling at that hour, said he had been sent by Mr. Page to ask me to reconsider my decision in relation to the issuing of another certificate. I replied that I would not, and he left.

The following morning Mr. Page called at my office in the custom-house, remarking "that he was very sorry that I had been so decided in the matter; that he was trembling every moment lest I should be drawn upon, and that he should not be able to respond to my call; that he had walked the gallery all night, trying to devise some means whereby he could extricate himself; that his depositors had become alarmed; that there was a run upon his bank for the reason that it was generally supposed that he was connected with Parkman & Co.; that a number of bills he had taken had been returned under protest on account of the decline in cotton, and that he was in an exceedingly embarrassed condition." This was on the morning of the 20th March, 1865. "Now, Mr. Carlton," he said, "if you will issue to me another certificate for \$250,000 I shall be able to carry this all through and come out all right." I replied that "it looked to me to be a desperate case, and that I did not feel justified in doing it." He argued the case for a long time. He told me that if I would do it Mr. Ainslee should go to New York, obtain the money for the bonds, and that \$200,000 should be sent immediately to me in currency. I thought it would be done, and that he would not deceive me. I had the utmost confidence in him and in the bank of which he was president. I issued to him the certificate in the same manner and form as before for \$251,600, (\$1,600 of it being interest,) and he gave me his check for \$251,600 on the Commercial Bank of Tennessee. I asked him to give me his official check as president of the bank. He said "it made no difference; this was the same manner in which the business had been done before, and it was all right."

Mr. Ainslee went to New York, obtained the bonds and converted them into money, and placed the amount to the credit of the Commercial Bank of Tennessee in the Chemical Bank, New York, and not one dollar of it has been paid to me to this day. He wholly and totally failed to fulfil his promises to me. At the time of this transaction Jay Cooke had been appointed agent for the sale of the 7-30 bonds, and my commissions were one-half per cent. instead of three-eighths.

On the 2d of April, 1865, Mr. Page came to me in the morning in great distress, and said, "Here are my drafts on New York come back protested." "How is that?" said I. He replied, "The bills that I have bought, upon which I predicated these drafts, have been dishonored, owing to the great decline in cotton, and if I don't receive some assistance I am ruined." Said I, "Have you not some friends that can help you?" Said he, "I don't dare to go to a bank in town to expose my situation. I have got no collaterals to offer, and I am expecting a run upon me as soon as the bank opens this morning." I said, "Mr. Page, what amount do you require to carry you through and fortify yourself against any contingency that may arise?" He remarked that if he could have fifty thousand dollars that he could meet all his protested drafts and everything likely to come back from New York; "and for God's sake, Mr. Carlton," said he, "let me have the money." I replied, "Mr. Page, what assurance have I that if I let you have the money you will return it to me; you have deceived me; but, notwithstanding, if this will carry you through I will give it to you." I gave him \$47,000 of currency, which he put in his hat, and came around to the bank before it opened, and in time to pay and save a crisis at that time.

He came up to see me at night much pleased. Said he had gone through the day "bully," to use his own remark.

I received his receipt for the \$47,000, saying it was to be repaid on demand; and it was repaid on the 15th of April. On the morning of the 12th of April Mr. Page called to see me, and said that he was getting along well; that he would go to New York, by way of St. Louis, and that he would collect the insurance of \$45,000 on the Arago, belonging to him, which had been lost, and likewise adjust the bills he held against cotton sold in New York, and which were under protest, and would realize out of all them some \$200,000 to \$300,000.

"Now, Mr. Carlton, if you will make another certificate for \$100,000 I will take it on to New York myself and convert the bonds and send proceeds immediately back by Mr. Ainslee, so that the money may be paid over to you, and in your treasury, in order to help you meet any draft that may be drawn upon you." I replied, "Supposing I am drawn upon before you remit me funds?" His reply was, "Oh! you won't be." I issued to him the certificate for \$100,000 for subscription to bonds of the second series, not to be issued till June, so there was a deduction of \$1,655 for interest from date of subscription to date of bond; and I said to Mr. Page, "Give me your check, payable at such time as you can pay it. Make it your own time, and meet it promptly." He said it would take ten days to make the turn. I said, "Give me your check, dated the 12th day of April," and he gave me his check of that date for \$98,345, drawn on the Commercial Bank, payable on the 22d day of April.

The certificate was issued in favor of the Commercial Bank of Tennessee, and was delivered to Mr. Page on receiving his check.

Mr. Page left for New York on the 13th. On the maturity of the check I presented the check to the cashier, Mr. Ainslee, for payment. He replied that there were no funds to meet it; that Mr. Page was still absent, and he had received no money from him. The check never has been paid. This is the last transaction with the Commercial Bank. Mr. Page went to New York and left me to get along the best I could with the following checks of Mr. Page, received as above stated, in my hands :

One dated February 6, 1865	\$207,000
One dated March 21, 1865.....	251,600
One dated April 13, 1865.....	98,345
	556,945

Question. What has become of the checks for the above amount, \$556,945?

Answer. Mr. Horace E. Garth, the teller in the Commercial Bank, came to me about the 8th or 10th of May, 1862, during the absence of Mr. Page in New York, and told me that Mr. Page stated to him, when he met him in Cincinnati, that he held Parkman, Brooks & Co.'s checks for these several amounts above mentioned. That the checks he (Page) had given me were given in his own name, and that the Commercial Bank was not liable for the subscriptions, and that he (Page) never would come back as long as I held those checks against him. That the chances of making the money out of him (Page) were very slim, but if I would exchange, and take the checks of Parkman, Brooks & Co. in place of them, he would come back. I declined exchanging the checks. I did not see the propriety of giving up the checks of Page and taking those of Parkman, Brooks & Co. Mr. Garth remarked that if I would do it Mr. Page pledged himself that he would come immediately back and render me all the assistance in his power, and arrange matters satisfactorily, or to that effect. I told Mr. Garth I would take the matter into consideration until morning. In the morning Mr. Garth called at the office, bringing with him the checks of Parkman, Brooks & Co. He asked me if I had decided what to do. He exhibited a letter that Mr. Porter, of Cincinnati, had written in relation to the matter, arguing that the bank was not liable for Mr. Page's checks, and, after reflecting upon the matter, I consented to the exchange, and received the checks of Parkman, Brooks & Co., and delivered to Mr. Garth the checks of Page, to be retained by him, and in case Page did not return they were to be delivered to me again. The checks of Parkman, Brooks & Co. were for the same amount, and bearing the same dates with the checks of Page, and were drawn on the Commercial Bank. Mr. Page returned in about two weeks from this time, on the 22d of May. After a few days, not having seen Mr. Page, I addressed him

a note, stating to him that, owing to severe family afflictions, I had refrained from addressing him on matters of business, but that the duty we owed to the living was paramount to that we owed to the dead. I recapitulated the circumstances under which the certificates had been issued, and the positive assurance that he had given to me from time to time that I should be protected, and his solemn assurance, upon the honor of a gentleman, and the faith of a brother mason, that his last check should be paid at the time of maturity, and asking him to come and see me. I kept no copy of my note. I received no reply to it, verbal or written.

The checks of Parkman, Brooks & Co. are here produced and delivered to Mr. Risley, and copies are attached to this deposition.

I am not acquainted with the handwriting of these checks, or with the signature; don't know that I ever saw it until I saw the checks. Don't know but I have seen it.

G. H. CARLTON..

Mr. Carlton re-examined by his counsel:

Question. State whether the deposits made by you in the Commercial Bank, of which you spoke in your first examination, were made in your official or individual character.

Answer. They were made to the credit of "Geo. N. Carlton, surveyor," and so entered on the books of the bank.

Question. Were the deposits made by you on any understanding that they were to stand as security for the checks or drafts of Parkman & Co., or Parkman, Brooks & Co.?

Answer. Most emphatically, no.

Question. State how it came that you made deposits to the amount of \$100,000, or any other amount, as surveyor, in the Commercial Bank.

Answer. My deposits were principally made of checks received of parties doing business with my office. For my own accommodation in part, and as a matter of favor to Mr. Page, with the distinct understanding that my checks should be honored at sight, I made these deposits. The very first was made because my vault was out of repair. Mr. Parkman once asked me if I could not make some deposits with the Commercial Bank, and said he spoke to me at the instance of Mr. Page, and for the benefit and accommodation of the bank. I was never asked to do anything for the benefit of Parkman, Brooks & Co., or of the cotton speculations, and never dreamed of it.

By Mr. Tucker:

Question. Will you state the extent of your means to pay anything to the government?

Answer. My private means are very limited. I have no money. I have house furniture, debts due me, and effects, to the extent of about ten thousand dollars. I owe several private debts to the amount of some three thousand dollars.

G. N. CARLTON.

Subscribed and sworn before me, August 15, 1865,

H. A. RISLEY,
Supervising Special Agent.

Cross-examination by counsel for Commercial Bank and Mr. J. W. Page:

Question. At the time Mr. Garth asked you to exchange checks, did he say anything about Mr. Page saying that there was an understanding between him (Page) and Carlton that the checks should be so exchanged at the time Page

gave the checks, and that what he (Page) now asked was in pursuance of such original understanding?

Answer. Mr. Garth said nothing of the kind, and gave no intimation of that kind.

In further answers to interrogations of counsel for the Commercial Bank and Page witness says:

I did not positively refuse to give up the Page checks for Parkman, Brooks & Co.'s checks when first applied to by Mr. Garth. Mr. Garth did not inform me that in case I did not give up the checks of Page and receive those of Parkman, Brooks & Co., that he was instructed to lay the matter before General Washburne for investigation. He intimated nothing of the kind, and it was not upon such intimation that I consented to the exchange. No such intimation whatever was made to me by Mr. Ainslee or any other person. I was not interested in any way or manner in the operations in cotton of Parkman & Co., Parkman, Brooks & Co., or E. Parkman, at any time. There was no understanding with any of these firms or persons that I was to furnish pecuniary facilities to aid them in their cotton speculations, or any such understanding with any member of either of the firms, or with Mr. Parkman.

By counsel, as above:

Question. Was there any understanding between yourself and Mr. Parkman or any other member of the above-named firms, that you were at any time to receive any benefit or advantage from the operations in cotton?

Answer. Mr. Parkman said to me, "Mr. Carlton, give us such facilities as you are authorized to give from your instructions from the Secretary, and as shall not be incompatible with your duties to the government, and if we make money out of this transaction I will make you a handsome present." Mr. Parkman did not name any such thing as pecuniary facilities, but permits, clearances, and such official acts. I did not furnish or procure to be furnished to Messrs. Parkman, Brooks & Co., or any other member of that firm or any person acting for them, any permit to purchase cotton. They were acting under special authority from the President and Secretary of the Treasury.

In further answer, witness says: I do not recollect furnishing any permit to Mr. A. C. Kirwan to purchase cotton, at the request of Parkman, Brooks & Co., or otherwise. My official record will show whether I did or not. I did not furnish nor authorize to be furnished from my office a permit to A. C. Kirwan to purchase cotton, dated back to the act of Congress imposing the tax of 25 per cent.

Question. Did you authorize Parkman & Co., or Parkman, Brooks & Co., at any time, to check upon or against deposits made by you in the Commercial Bank, or did you make deposits in the bank, to stand as security for our drafts upon the account of Parkman & Co., or Parkman, Brooks & Co.?

Answer. I never did one or the other, in any shape or form, and I never made any deposit in the Commercial Bank after the firm of Parkman, Brooks & Co. was formed. I never made a deposit in the bank for the benefit of either of these firms, directly or indirectly.

Question. Was there not a deposit of \$100,000 or more, in greenbacks, made by you, in your name, in the Commercial Bank, and to be checked out by your authority, by Parkman & Co., or Parkman, Brooks & Co., or to stand as security for the drafts made by Parkman & Co., or Parkman, Brooks & Co.?

Answer. None, emphatically. No, in no shape or form.

Question. Did you make a sale of treasury bonds of \$100,000 to E. Parkman, April 19, 1865?

Answer. I was obliged to have money to meet drafts drawn against the previous deposits with me, and I issued a certificate to E. Parkman & Co. for \$100,000, April 16, 1865, and I received the bonds, and they were sold in New

York, and I received the proceeds to meet the drafts drawn upon me by the Treasurer. I resorted to this to save my credit, Page having failed to comply with his obligation.

Question. Had Parkman & Co. purchased the bonds of you?

Answer. No; they consented to the use of their name in the transaction. They did not give me any check or obligation when I issued to them the certificate.

Question. Who transacted the business for you in New York?

Answer. Mr. Garth, then teller of the Commercial Bank. Mr. Garth volunteered to go to New York and attend to the business. I don't claim that the Commercial Bank had anything to do with this transaction.

Question. Did you, on the succeeding day, being the 20th of April, issue another certificate to E. Parkman & Co. for \$200,000; and what was done with the funds arising from this certificate?

Answer. I did; and the proceeds were applied to the payment of drafts from the Treasurer upon me for deposits. The negotiation was made by Mr. Garth in New York. This was the same kind of a financial operation with the one above mentioned.

Question. What interest had E. Parkman & Co. in these transactions?

Answer. None in the world.

Question. How did their name come to be used?

Answer. They were large operators in cotton, and would be likely to be supposed to have money to invest, and were knowing to the transaction, and consented to the use of their name. I went to Parkman's office and saw Mr. Larned, his cashier, and explained to him my situation, and said to him: "I want to issue two certificates of deposit—one for \$100,000 in the name of E. Parkman & Co., and another for \$200,000 in the name of Parkman, Brooks & Co.—to raise the means to meet the drafts that will shortly be drawn upon me on account of indebtedness of the Commercial Bank." Mr. Larned consented to the use of the name of E. Parkman & Co., and Parkman, Brooks & Co. Parkman or Brooks were neither of them in Memphis at the time. I wish to correct a statement made above. I did receive the checks of E. Parkman & Co. and Parkman, Brooks & Co., at the time of issuing the certificates, and when I received the proceeds of the bonds I returned the checks to Mr. Larned, who had given them to me.

Question. Did you issue a certificate on sale of treasury bonds, May 15, 1865, for \$300,000, to John Ainslee; and if so, what did you receive for that certificate, and what became of the proceeds of it?

Answer. I did issue such a certificate. I at the time received John Ainslee's receipt for it. He negotiated the conversion of the bonds in New York and paid me the money, and it was applied in payment of drafts drawn by the Treasurer on me. I employed Mr. Ainslee, and paid him. I am not aware that Parkman & Co. had anything to do with it. No portion of the money went to Parkman, Brooks & Co., or any of the firms. I paid Mr. Ainslee's expenses, and gave him one-half of the commissions.

Question. On the 17th of May, 1865, did you issue a certificate of \$400,000 on sale of treasury bonds to W. Thompson & Co., and what did you receive for the certificate, and what became of the proceeds; and why was this operation resorted to?

Answer. I did issue such a certificate. I received at the time the receipt of W. Thompson & Co. John Ainslee gave me the receipt. Ainslee informed me that Thompson & Co. consented to the use of their name. I don't know that he was a member of the firm, or an agent of the firm. Ainslee negotiated the conversion of the bonds, paid me the money, and it was used in paying drafts of the treasury on me. I resorted to this transaction to raise the means for carrying the indebtedness of the Commercial Bank. Also on May 3, 1865, I

issued a certificate to John Ainslee for \$75,000, and took his receipt and received proceeds, and applied them in the same way. This was the same kind of a transaction, and resorted to for the same purpose. June 13, 1865, I issued a certificate to myself for \$20,000, and sent by mail to J. Cooke, at Philadelphia, and received the bonds. On the 19th of June, 1865, I issued a certificate in the name of J. C. Forbes for \$63,500. I received Mr. Forbes's receipt for it. I think Ainslee negotiated the conversion of the bonds into money, and I received it and applied it as above. This was a like transaction with those above stated, all of the same character except the \$20,000 certificate to myself. On the 20th of June, 1865, there was a like transaction in the name of Parkman & Co. for \$150,000. I did not receive any receipt on issuing this certificate. They were not consulted. Their names were used because Mr. Ainslee said subscriptions in their names were good. I will correct my statement in regard to this item. I did receive Mr. Parkman's check on the Commercial Bank for this \$150,000. Mr. Parkman was here at the time. The money was received by me for the bonds through Ainslee, and was applied as in other cases before mentioned, and Parkman & Co.'s check was given up, and they never received any of the proceeds. I took the check as a memoranda without any expectation of presenting it for payment.

Question. If Mr. Parkman had no interest in this transaction, how did he come to give his check on the Commercial Bank for \$150,000?

Answer. He did it to accommodate me, knowing the trouble I was in. He is an old personal friend. On the 20th of June, 1865, the same kind of transaction took place in the name of P. B. Larned for \$86,500. The proceeds were appropriated in the same way, and the transaction was resorted to for the same purpose as the preceding. July 3, 1865, there was a like transaction in the name of E. Parkman & Co. for \$300,000. I received the receipt of Mr. Parkman, or his check on the Commercial Bank, at the time. This was negotiated in the same way, and the transaction resorted to for the same purpose: \$248,000 of the proceeds was sent to Memphis, and is now here under control of the treasury agent; \$50,000 was paid to the department through Jay Cooke while I was in Washington. I cannot tell what became of the other two thousand dollars; I have received no account from Ainslee.

Examination adjourned until Wednesday morning at 9 o'clock.

AUGUST 8, 1865.

Cross-examination of George N. Carlton resumed:

Question. Why does not the marginal entry in your book show the name of the person to whom the certificate for \$300,000, of the 3d of July, was issued?

Answer. Simply a matter of neglect—the omission was accidental. I had nothing in my office to show to whom it was issued except the check of Parkman. The original certificate in duplicate shows to whom the certificate was issued.

Question. When was the check of Parkman & Co. given up?

Answer. When I received intelligence of the receipt and conversion of the bonds.

Question. On these kiting operations which you have above described, running from the 19th of April to the 3d of July, 1865, did you charge the government the usual percentage on sale of the government bonds?

Answer. I was not an agent of the government in the sale of the bonds; I was the agent of Jay Cooke, and charged the usual commissions he allowed on sale of bonds.

Question. Did you charge the commission on the sale represented by the \$20,000 certificate issued to yourself?

Answer. I did.

Question. Did you make a deposit of \$20,000 when you issued the certificate to yourself?

Answer. I did.

Question. Did the issue of the certificate of the 19th of April for \$100,000, and of the 20th of April for \$200,000, both take place the same day?

Answer. They did.

Question. Why was the different date entered in your book in the marginal note?

Answer. I don't know as I can answer the question. In a financial operation of this kind it must be obvious to all of you that some finesse was necessary, and I very likely thought would look better to have the certificates bear different dates.

Question. Was the certificate of the 15th of May for \$300,000, and of the 17th of May for \$400,000, both issued the same day also?

Answer. They were not.

Question. Were the certificates of the 17th of June and 20th of June, 1865, all issued on the same day?

Answer. They were all issued on the same day, and for the same reason above stated as to those of the 19th and 20th of April.

Question. Have you the notices of the various drafts upon you from the Treasury Department showing the dates and amounts of each on file in your office?

Answer. I have, with the exception of some transfer drafts.

Question. Will you please furnish us with all those notices, and specify, if you please, the time and amount of the transfer drafts to which you refer, and what amount did you pay of drafts on you, as public depository, from the 19th of April to the 3d of July, 1865, inclusive?

Answer—

On the 27th of April I paid.....	\$210 99
On the 6th of May I paid.....	360, 000 00
On the 9th of May I paid.....	15, 000 00
On the 19th of May I paid (transfer draft).....	450, 000 00
On the 7th of June I paid.....	184 66
On the 17th of June I paid.....	4, 500 00
On the 17th of June I paid.....	500, 000 00
On the 24th of June I paid.....	2, 000 00
On the 1st of July I paid.....	315 00
	1, 332, 210 65

Question. How much money had you on hand on the 19th of April, 1865, as public depository of all moneys received from all sources?

Answer. I cannot readily state how much I had on the 19th of April. My weekly report was made on the 15th, the copy of which I have preserved, showing the amount on hand the week ending April 15, 1865, \$547,726 78. My next weekly report, made April 22, of which I also preserved a copy, now before me, shows the amount on hand on that day, April 22, \$843,010 79. My next weekly report, dated April 29, shows the same amount on deposit, \$843,010 79. My next weekly report, of May 6, 1865, shows amount on hand \$483,010 79. My next weekly report, of May 13, 1865, shows amount on hand \$468,010 79. My next weekly report, of May 20, 1865, shows amount on hand \$710,705 79. My next weekly report, of May 27, 1865, shows the same amount, \$710,705 79. My next report, of May 30, being my monthly report, shows \$784,625 79. My next report, of June 10, shows amount on

hand \$784,441 13. My next weekly report, of June 17, shows amount on hand \$299,717 13. My next weekly report, of June 24, shows amount on hand \$594,764 43. My next report, at the end of the month, June 30, shows no alteration in the account; amount on hand \$594,764 43. My next weekly report, of July 7, 1865, shows amount on hand \$953,948 12.

Question. What was there in the state of your accounts as depositary, or what notice from the Treasury Department, which induced you to think it necessary to raise \$300,000 from the sale of treasury bonds on the 19th of April, 1865, by resort to kiting?

Answer. Because it was necessary to make my accounts good to the government, on account of the non-payment of Mr. Page's checks.

Question. Did not the deficit, on account of their checks, according to your statement, at that date amount to \$556,945; and why did you not sell treasury bonds enough to make up the whole deficit?

Answer. The deficit did amount to \$556,945, as stated by me. The balance of the deficit I borrowed from the custom-house in my hands.

Question. How does this transaction appear upon your books, as to borrowing upon the custom-house funds?

Answer. It does not appear at all; I made no entry of it.

Question. On the 15th and 17th days of May it appears that you sold treasury bonds to the amount of \$700,000; what was there in the state of your accounts requiring you to make a sale of \$700,000 in bonds, to supply the deficiency of \$556,945?

Answer. I don't know what kind of answer to make to that. I was determined to fortify myself against any drafts that might be drawn upon me. If the amount was in excess of my deficit, the money would be in my hands to answer any drafts of the Treasurer.

Question. From the 19th day of June to the 3d of July it appears that you disposed of, by this kiting operation, treasury bonds in different amounts, amounting, in the aggregate, to \$600,000; now, what was there in the state of your accounts to require you to resort to this operation, to sell \$600,000 in treasury bonds in this way?

Answer. To make up for the deficit due by the Commercial Bank; and as to the excess, it was to the credit of the United States. I deemed it immaterial whether there was an excess or not, because the funds were placed to the credit of the United States.

Question. It appears that, from the 19th of April, 1865, to the 3d of July, you raised, by the sale of treasury bonds, through this kiting operation, \$1,695,000; now, can you give any specific ground for the necessity of your raising so large an amount within that period, simply on account of the deficit said to be on account of Mr. Page's checks remaining unpaid?

Answer. My cash-book will show the necessity, and it was likewise necessary to raise funds in anticipation of drafts that would be drawn upon me on account of that deficit. It will readily be seen that this money must be provided for in advance; and the balance of the cash-book will show that there was not a larger excess drawn for than was necessary to provide for the deficit.

Question. Do your weekly reports which you have given above show the state of your cash-book? and please point out in your cash-book the specific items creating the necessity for this large amount of money.

Answer. My reports correspond with my cash-book, and show its condition. I can point out the necessity, but it will take some time. I will furnish a copy of the account in my cash-book, within these dates inclusive, to be appended to this deposition. I cannot point out the specific items without dissecting the account in the cash-book.

Question. When you left here for Washington city, what amount of money did you take with you?

Answer. I took \$48,000 of money belonging to the United States.

Question. What was the amount of your means when you were appointed public depositary?

[Objected to by counsel for witness, and also by counsel for Mr. Parkman, and by counsel for Mr. Brooks, as irrelevant; and witness expressing objection to answer it, the question suspended for the present, with liberty to renew it hereafter, subject to exceptions.]

Question. Do you claim now to be unable to satisfy the demands of the government against you as late public depositary, in whole or in part, out of any means, public or private, directly or indirectly, under your control?

[Question objected to by counsel for witness and Parkman and Brooks as irrelevant, and as entering into his private affairs.]

Answer. As regards the means of the government heretofore under my control as public depositary, I have already given them up to agents of the government, and have no control over them. So far as regards my private means, disconnected with gains received for the government, and disconnected with my official capacity, I decline to answer at present.

[The question of inquiring into his private means reserved for further consideration.]

Question. Do you decline to state your own means to meet the defalcation of the government?

[This question objected to by counsel for the witness as irrelevant, and reserved for the present for decision hereafter.]

Question. Have you received, directly or indirectly, or are you in expectation of receiving hereafter, from Parkman & Co., or Parkman, Brooks & Co., or any one connected with either of these firms, or claiming to represent them, or either of them, any means?

Answer. I have not received any means from any of the persons or firms named, and have no expectation of receiving anything from them hereafter.

Question. Did you at any time consider Mr. Parkman, or either of his firms engaged in these cotton operations, under any obligations to you, legal or honorable, to give you any portion of the profits of these speculations, if they were successful?

Answer. I did not consider that they were under any legal obligation, but they are honorably bound to give me something; I have no idea of the amount. The matter was never discussed with any man of the firm as to the amount.

Question. Should you have considered that obligation to go above \$50,000 or \$100,000?

Answer. I should not—nor over \$25,000.

Question. Had you no knowledge of the fact that the proceeds of the sales of treasury bonds, sold to the Commonwealth Bank or Mr. Page, went to the benefit or use of Parkman & Co., or Parkman, Brooks & Co.?

Answer. I had not—none in the world.

Question. It appears from the marginal memoranda that the sales of these treasury bonds, for which you held Mr. Page's checks, were made to the Commercial Bank; now, do you undertake to say that the bank did not receive the avails of these bonds?

Answer. By no means; I undertake to say that the bank did receive the proceeds.

Question. If this be the case, why did you not present the checks upon that bank for payment, and if unpaid, sue the bank for the money?

Answer. Because Mr. Page told me he was not then in funds to pay them, but would be in a short time. I considered Mr. Page and the bank as one and the same. I did not sue the bank because I relied upon Mr. Page's honor to take up the checks agreeable to his promise to me that he would do so.

Question. You say that he forfeited his word with you on this subject; now

why did you not hold him and the bank to the legal obligation, and compel them to perform it?

Answer. Because of his subsequent and repeated promise that he would pay them, and that he and the bank had the means to do it.

Question. When Mr. Page had, as you say, broken his word with you and failed to live up to his agreement, and yet had the means of payment, why did you voluntarily give up the checks evidencing a legal obligation?

Answer. Because, when he went away he promised me, upon the faith of a brother mason, that he would protect me at all hazards, and likewise upon his promise that he would return immediately if I would exchange his checks for Parkman, Brooks & Co.'s checks, and do all in his power to adjust, settle, and liquidate the indebtedness.

Question. Did you consider his word as a brother mason any better than his legal obligation?

Answer. Yes, I did.

Question. When the Commercial Bank was legally liable to you for money it received from you, why did the return of Mr. Page become necessary to enable you to enforce your obligations against the bank?

Answer. Because I considered Mr. Page the Commercial Bank.

Question. Did you think you could not sue the bank without Mr. Page returning?

Answer. I did not consider the matter of legal proceedings at all, but relied upon Mr. Page's honor, and was willing to wait for his return.

Question. When you received the checks of Parkman, Brooks & Co. in exchange for Mr. Page's checks, did you receive and hold them as legal obligations which you had a right to enforce in law?

Answer. I did.

Question. Why did you not present them to the bank for payment; and, if not paid, give the drawers of the checks notice of non-payment, in order to perfect your right to the claim?

Answer. Because Mr. Ainslee, the cashier of the bank, told me the drawers of the checks had no funds in the bank to meet the checks, and neither Parkman nor Brooks, or any known member of the firms, was here.

Question. Why have you never made any attempt to enforce the liability on these checks, either against the bank or Parkman, Brooks & Co.?

Answer. In the first place, so far as the bank was concerned, I had no claim on the bank on these checks; and as regards the property of Parkman, Brooks & Co., I never have been able to find anything tangible to attach. I have never seen the time when I could secure the debt as against them.

Question. Did you ever call upon Parkman, Brooks & Co. for the payment of those checks, or inquire of them or anybody else as to their means of meeting these checks?

Answer. On Mr. Parkman's return from the Red river, on or about the 20th May, I told him that I had received these checks from Mr. Page, and that I should look to him for payment. Mr. Parkman made some evasive answer; what it was I do not recollect—"the matter should be attended to," or something of that sort. That was all I did in the matter.

Question. After you received those checks of Parkman, Brooks & Co., were you not aware that they still held large amounts of cotton which might have been attached, and did not cargoes of their cotton reach the city of Memphis, which might have been attached?

Answer. No. On the contrary, no cotton belonging to them reached Memphis after I received their checks until the arrival of the steamer Decatur, on or about the 22d or 23d of May, or thereabouts, which cargo was seized by a government officer immediately on its arrival for a violation of law on treasury

regulations, and has ever since been under seizure, and is libelled for condemnation to the United States.

Question. Did you not at one time give up or pay out of your hands these checks of Parkman, Brooks & Co., taken in exchange for Page's checks?

Answer. They were never out of my custody, or out of my control.

Question. Did not Mr. Parkman ask you at one time to give them up?

Answer. Never; nor intimated any such desire.

Question. Do you hold them now as legal obligations against Parkman, Brooks & Co.?

Answer. I hold them as vouchers for disbursements made by me as designated depository.

Question. I want an answer, Mr. Carlton. Do you hold the checks as legal obligations against Parkman, Brooks & Co., and do you rely upon them?

Answer. I have stated how I hold them—as representing the money of the government.

Question. Do you rely upon them as of any value as against Parkman, Brooks & Co.?

[Objected to by counsel for Mr. Brooks and for Mr. Carlton, as the answer would be a statement of the witnesses opinion on a legal question. Objection overruled, and witness answers:]

Answer. I do.

Examination postponed until Wednesday morning, 9 o'clock.

AUGUST 9, 1865.

Cross-examination of George N. Carlton resumed.

By Mr. Yerger, counsel for Mr. Brooks:

Question. What is the amount of deposit on your accounts as public depository?

Answer. The amount of the three checks I hold against Parkman, Brooks & Co., received in exchange for the checks of J. W. Page, jr., amounting in the aggregate to \$556,945.

Question. Were these checks of Page given for certificates delivered by you to him personally, and upon his individual credit and that of the Commercial Bank?

Answer. The certificates of deposit were handed to Page in person by me, solely upon the credit of Page and the Commercial Bank.

Question. Did he pretend that they were for the benefit of any other person or persons than himself and the Commercial Bank?

Answer. The first check of the 6th of February, 1865, for \$2,007, was given for his benefit and that of the bank; the two subsequent checks, one of March 20 and one of the 13th of April, were given for his and the bank's benefit to carry the debt along. Mr. Page never pretended that any other person or persons than himself and the bank were interested in the matter.

Question. State now what reasons influenced you in taking the checks of Parkman, Brooks & Co. in exchange for the checks of Page.

Answer. I believed that Mr. Page was a partner in the firm of Parkman, Brooks & Co., and that the checks of Parkman, Brooks & Co. were worth more to the government than the individual checks of Mr. Page; that they would be better security for the government. I was influenced by no other motive than to protect the government.

Question. Was it your intention or purpose in receiving the checks of Parkman, Brooks & Co. in exchange for those of Page to discharge Page and the Commercial Bank from that liability or indebtedness?

Answer. By no manner of means. I will state, as I have heretofore done, that it was upon the promise of Mr. Page that he would return and arrange the matter satisfactorily that I consented to the exchange.

Question. Was Page, or F. W. Brooks, or E. Parkman in Memphis when the exchange was made?

Answer. They were not, either of them. The checks of Parkman, Brooks & Co. were delivered to me by H. A. Garth, teller of the Commercial Bank.

Question. Has Mr. Page ever paid any part or portion of these checks to you?

Answer. No; not one dollar.

Question. Did E. Parkman or F. W. Brooks ever receive any money or other consideration for the three checks from you?

Answer. No.

Question. (A copy notice exhibited to witness, and marked Exhibit C.) Did you receive a notice on the 30th May, and of which this exhibit is a copy?

Answer. I did.

Question. Did E. Parkman or F. W. Brooks solicit from you at any time for their individual account, or for the account of their firm, a subscription to the United States 7-30 bonds up to the date of the delivery of these three checks?

Answer. Yes.

Question. Did they, or either of them, make such subscription?

Answer. None other excepting as stated by me in reference to E. Parkman's subscription of \$100,000 on the 9th of November, 1864, and for the purposes stated by me heretofore, and which was paid by J. W. Page, February 6, 1865.

Question. On the 19th of April, 1865, it appears from your books you issued a certificate to E. Parkman & Co. for \$100,000, and on the next day for \$200,000. State whether Parkman, Brooks, or Page were in Memphis at that time?

Answer. They were neither of them here.

Question. Did Parkman or Brooks receive any amount of money or other consideration?

Answer. They did not.

Question. State whether Franklin W. Brooks was at any time present when subscriptions were made in the name of E. Parkman & Co., or Parkman, Brooks & Co., or did he ever individually give his consent to you to anything of the kind?

Answer. He was not present, and never personally gave his consent; and I did not know him personally in the transactions. He never spoke to me, or I to him, concerning these transactions, until they were all over.

Question. Did Parkman or Brooks receive from you any money or currency for any subscriptions in the name of E. Parkman & Co. between the 19th of April and the 3d of July, 1865, including both dates?

Answer. No.

Cross-examined by Mr. Kartrecth, counsel for Mr. Parkman:

Question. Explain why, between the 19th of April and the 3d of July, 1865, inclusive, it became necessary to make sale of so many bonds as has been stated by you to carry the amount of debt stated?

Answer. I make immediate report to the United States Treasurer of all sales of bonds, and the amount is liable to be drawn for at any time; hence the necessity of making another subscription immediately in order to provide against drafts drawn upon the preceding subscription.

Cross-examined by G. P. Foute, counsel for Mr. Carlton:

Question. State whether or not you have ever received any individual benefit on any of the proceeds of any of the operations you speak of between

the 19th of April and the 3d of July, except the one of the 13th June for \$20,000?

Answer. None whatever, except the commission allowed for the sale of bonds.

Question. You say that at the time you received the Parkman, Brooks & Co.'s checks you believed Page to be a partner in that concern. What knowledge have you on that subject?

[Question withdrawn for the present.]

Question. When you took the checks of Parkman, Brooks & Co. in exchange for Page's checks, did you not regard the exchange as a real transaction, and calculated to enhance the security to the government?

Answer. I did.

[The counsel for the Commercial Bank and Mr. Page object to the competency of the witness's belief, opinions, and statements of what influenced him in the transactions alluded to, and ask that that portion of his testimony be stricken out.]

Holds that the evidence is incompetent as against the Commercial Bank and Page, but proper so far as Carlton is concerned in this investigation before him.]

Further cross-examined by counsel for the Commercial Bank and Mr. Page :

Question. It appears that on the 9th of November, 1864, treasury bonds to the amount of \$100,000 were sold to E. Parkman, and a certificate in his favor was issued for that amount; now, are you not aware that the issue of the certificate for \$200,000 to Page of the 6th of February, 1865, furnished the means with which Page lifted Parkman's check for this \$100,000?

Answer. I know that Page, when he applied for the \$200,000 certificate, said he had no money; and I knew that, by allowing him to make that subscription, I was enabling him to raise the money with which he paid Parkman's check. Page paid Parkman's check to me before I gave him the certificate as before stated.

Question. You stated in your original examination that Mr. Page called upon you on the 9th of November and obtained a certificate for \$50,000 in the name of Ainslee on account of subscription to treasury bonds, plus the interest, and that in the evening of that day Page and Mr. Parkman came together to your office, when the application for a further subscription for \$100,000 treasury bonds was applied for in Parkman's name, and was made, and the certificate issued to E. Parkman. Now, can you explain how it comes that the marginal entry in your book, from which the certificates were cut out and issued, show that the certificate for \$100,000 to Parkman was issued prior to the certificate of \$50,000 to Ainslee?

Answer. I explained this by stating that the certificate for \$50,000 was not issued to Ainslee during the day, but the arrangement was made for issuing it. It was not actually issued until the evening after the second arrangement was made, when they were both issued at the same time.

Question. Did you not at one time pass out of your hands the three checks of Parkman, Brooks & Co., above mentioned, and put the same into the hands of Mr. Lousdale?

Answer. When I left for Washington, July 12, I placed in Mr. Lousdale's hands a package of private and public documents, including the three checks specified, for safe-keeping.

By Mr. Kartreth :

Question. Do you or not know that the purchase of \$100,000 United State bonds on the 9th of November, 1864, in the name of E. Parkman, and \$50,000 in the name of Ainslee, were made at the instance of, and for the benefit of, Mr. Page and the Commercial Bank?

Answer. No ; I don't know anything about it.
Cross-examination of Mr. Carlton here closed.

G. N. CARLTON.

Subscribed and sworn to before me.

H. A. RISLEY,
Supervising Special Agent.

EXHIBIT C.

MEMPHIS, TENNESSEE, *May* 26, 1865.

SIR: We have just learned that the Commercial Bank of this city subscribed with you for United States government 7-30 bonds to the amount of five hundred and fifty thousand dollars, for the payment of which you received the checks upon that bank of its president, Mr. J. W. Page, jr.

We are informed that, during our temporary absence from the city, checks, purporting to be Parkman, Brooks & Co.'s, which, though we have not seen, are informed were given to you for the amounts aforesaid in exchange for those of said Page upon the Commercial Bank aforesaid.

If such be the case, they were not drawn by the company or any member of the company; and if said checks were given by any employé of the company, they were done without our authority, knowledge, or consent, and we would lose no time in informing you. We ignore and repudiate the whole transaction, and will in no way hold ourselves responsible therefor.

Respectfully,

PARKMAN, BROOKS & CO.
BROOKS & CO.

G. N. CARLTON, Esq., *Memphis, Tennessee,*

EXHIBIT A.

DESIGNATED DEPOSITARY AND FINANCIAL AGENT OF THE UNITED STATES.

No. ———.

CUSTOM HOUSE, MEMPHIS, TENN.,

Surveyor's Office, ——— —, 1864.

I certify that ——— ——— this day deposited to the credit of the Treasurer of the United States ———— dollars on account of, and in exchange for, three-years seven and three-tenths per cent. treasury notes, authorized by the act of June 30, 1864, to be issued, bearing date August 15, 1864, for which I have signed duplicate certificates.

Principal..... \$———

Interest..... ———

Total..... ———

—————
Depository.

(Duplicate, the original to be transmitted to the Secretary of the Treasury.)

EXHIBIT B No. 1.

MEMPHIS, TENN., *February* 26, 1865.

Commercial Bank of Tennessee pay to 200,000 7-30 Carlton, ——— ———, or bearer, two hundred and seven thousand dollars.

\$207,000.

PARKMAN, BROOKS & CO.

EXHIBIT B No. 2.

MEMPHIS, TENN., *March* 21, 1865.

Commercial Bank of Tennessee pay to 250,000 7-30 Carlton, ————, or bearer, two hundred and fifty-one thousand and six hundred dollars.
\$251,600. PARKMAN, BROOKS & CO.

EXHIBIT B No. 3.

MEMPHIS, TENN., *April* 13, 1865.

Commercial Bank of Tennessee pay to 100,000 7-30 Carlton, ————, or bearer, ninety-eight thousand three hundred and forty-five dollars.
\$98,345 00. PARKMAN, BROOKS & CO.

No. 4.

Marginal entry referred to in Mr. Carlton's testimony.

APRIL 12, 1865.

Principal.....	\$100,000 00
Less interest to June 15.....	1,280 00
	98,720 00
Less commission.....	375 00
Total.....	98,345 00

Issued to Commercial Bank of Tennessee.

J. W. PAGE, JR., *President.*

The interest on \$50 is one cent, on \$100 two cents, on \$500 ten cents, and on \$1,000 twenty cents per day.

Copy account referred to in the testimony of Mr. Carlton.

The United States in account current with G. N. Carlton, special agent of the Treasury Department, and designated depository of the treasury, at the post of Memphis, to June 30, 1865.—(Under official bond.)

1865.

March 27, to draft 1296, favor H. Stephens.....	\$10,000 00
April 3, to draft 1297, favor W. W. Bailey.....	2,000 00
April 5, to draft 1353, favor Captain D. S. Pride.....	4,500 00
April 14, to draft 8042, favor E. W. Dunn.....	250,000 00
April 22, to draft 5068, favor J. L. Williamson.....	210 90
May 6, to draft 8132, favor E. W. Dunn.....	360,000 00
May 9, to draft 1539, favor H. Stephens.....	10,000 00
May 9, to draft 1481, favor W. E. Fiecslau.....	5,000 00
May 19, to draft 2361, B. Farrar, assistant treasurer, St. Louis..	450,000 00
June 7, to draft 1669, favor S. H. Welcher.....	184 66
June 17, to draft 1752, favor G. H. Ellery, agent.....	4,500 00
June 17, to draft 2415, B. Farrar, assistant treasurer, St. Louis..	500,000 00
June 24, to draft 1753, favor T. H. Yeatman, agent.....	2,000 00
June 30, to draft 8091, favor A. S. Mitchell.....	315 00
July 3, to balance due the United States	892,289 43
	2,491,000 00

1864.

December 27, by balance brought forward..... \$221, 296 85

1865.

January 18, by deposited by G. N. Carlton, surveyor, on account of customs.....	6, 286 00
February 6, by sale of 7-30 bonds.....	207, 000 00
February 15, do do.....	24, 906 52
March 8, do do.....	5, 002 25
March 20, do do.....	250, 662 50
April 13, by internal revenue deposit.....	727 93
April 12, by sale of 7-30 bonds.....	98, 345 00
April 19, do do.....	98, 485 00
April 20, do do.....	197, 010 00
May 15, do do.....	297, 015 00
May 17, do do.....	395, 680 00
May 30, do do.....	73, 920 00
June 13, do do.....	19, 776 00
June 19, do do.....	62, 865 00
June 20, do do.....	148, 530 00
June 20, do do.....	85, 652 30
July 2, do do.....	297, 840 00
	2, 491, 000 08
July 3, by balance due the United States.....	892, 289 43

Deposition of Jesse W. Page, Jr.

The said Jesse W. Page having been duly sworn that the evidence he shall give on the investigation pending before me, on behalf of the United States, shall be the truth, the whole truth, and nothing but the truth, deposes and says:

Examination by T. W. Bartly, on behalf of the Commercial Bank:

Question. State, if you please, what transactions took place between the Commercial Bank and George N. Carlton, of this city, and the firm of Parkman & Co., and Parkman, Brooks & Co., with reference to the business of Parkman & Co., and Parkman, Brooks & Co.

Answer. About eighteen months ago, Carlton commenced giving certificates for the 7-30 loan of the United States, which were negotiated through the Commercial Bank for the benefit of Parkman, Brooks & Co. About the same time, or soon after, he deposited in the Commercial Bank, to his own credit, one hundred thousand dollars, for the benefit of Parkman & Co., and Parkman, Brooks & Co. He said, "I wish to make a deposit of \$100,000, and will not draw it so long as they owe you, or until their accounts are made good, or some satisfactory arrangement is made; this is according to an understanding between Parkman and myself." The officers and clerks were notified of the character of the deposit, in order that Carlton's checks should not be paid if he checked against the \$100,000. He deposited, under this arrangement—

On the 19th December, 1863.....	\$70, 536 63
On the 21st December, 1863.....	8, 196 85
On the 22d December, 1863.....	3, 806 37
On the 23d December, 1863.....	17, 833 54
On the 24th December, 1863.....	52, 941 73
On the 26th December, 1863.....	3, 871 16
On the 28th December, 1863.....	11, 781 45

On the 31st December, 1863.....	23, 207 74
On the 2d January, 1865.....	2, 749 26
On the 4th January, 1865.....	4, 572 09
On the 6th January, 1865.....	3, 558 48
On the 14th January, 1865.....	5, 197 89
On the 15th January, 1865.....	17, 207 00
On the 26th January, 1865.....	25, 000 00

The first check Carlton drew was December 23, 1864, for \$50,000. The agreement was that he should make deposits from time to time, and check against them, but should always leave \$100,000 to his credit, to stand for the benefit of Parkman & Co., or Parkman, Brooks & Co. The next check was on the 12th of January, 1864, for \$50,000. The next on the 28th January, 1864, for \$16,518 14, and on the 13th February he checked out \$25,000. At that time the book was balanced, showing \$100,000 05 to Carlton's credit; and on the 14th of April, same year, this balance was drawn by Carlton. The money was given to me, and I deposited it to my credit in the bank, by Carlton's order, for the benefit of Parkman & Co. I gave Mr. Carlton a memorandum check or receipt for all the money that was put to my credit for the benefit of Parkman, Brooks & Co., but I do not remember how it was in this instance, whether I gave a check or receipt. No other transaction of this kind took place between us, until we came to the sale of the 7-30 bonds. The bank never bought any 7-30 bonds of Mr. Carlton, or subscribed for them through him, for the use or benefit of the bank. All certificates for the 7-30 loan that were collected by the bank, or passed through the bank, were for the benefit of Parkman, Brooks & Co., or of Carlton himself, and generally at the request of Carlton, and sometimes at the request of Parkman. Parkman sometimes delivered the certificates to the bank, but Carlton generally did it. All discounts or loss that occurred to the bank on sale of these bonds were paid by Parkman, Brooks & Co., or Carlton. The bank had no interest in the bonds, and made nothing out of the subscription except the rate of exchange between this city and New York, which was a regular business transaction. Whenever a messenger was sent on to receive and convert those bonds, Parkman, Brooks & Co. or Carlton always paid the expenses. Carlton represented to me that he had made a considerable amount of money, and that the money he furnished Parkman, Brooks & Co. was his individual money. This was about the beginning of Carlton's transactions with the bank. The first certificate for \$50,000 that was given to the bank by Carlton was sent to the Chemical Bank, New York, by the Commercial Bank, for collection. The Chemical Bank, after some delay at Washington in the issue of the bonds, received and converted them, and gave the Commercial Bank credit for the proceeds. Most or all of the subsequent subscriptions were negotiated through Lawrence & St. John, bankers in New York, or by special messenger. The proceeds were deposited to the credit of the Commercial Bank in the Chemical Bank, New York, or brought back in currency by the messenger and paid in to the Commercial Bank, frequently to my individual credit, from the fact that Carlton held my individual checks, with the understanding between Carlton, Parkman, and myself, that Parkman, Brooks & Co. were to overdraw their account to the amount of the proceeds of bonds thus placed to my individual credit, and the amount so placed to my credit was to be transferred to the credit of Parkman, Brooks & Co. when my checks were returned by Carlton, which Carlton promised should be done as soon as Parkman returned and they had a settlement; and these memorandum checks were not designed to be presented to the bank for payment, but to be held by Mr. Carlton as evidence of the amount of the bonds sold and given to the bank for Parkman's benefit. I cannot state the dates or the number of these transactions. The proceeds of the sales of these treasury bonds have all been drawn out of the bank by the checks of Parkman & Co. and Parkman,

Brooks & Co., and the bank has no portion of them at this time, and has received no benefit whatever from them except the difference in exchange, which was a legitimate transaction. Carlton held three of my checks, amounting to \$556,945, for some time. The prior ones had been given up from time to time, and he gave up the three to Mr. Garth, teller of the bank, about four months ago. Since that time both Carlton and Parkman have urged the bank to make similar subscriptions to treasury bonds, which the bank has declined to do.

Question. Had you any personal interest in these transactions beyond the interest of the bank, as above stated?

Answer. I had none.

Question. Has the bank any funds on hand now belonging to Mr. Carlton, directly or indirectly?

Answer. None.

Question. Has the bank any funds belonging to Parkman & Co., or Parkman, Brooks & Co.?

Answer. None.

Question. Will you state whether the bank accounts of Parkman & Co. and Parkman, Brooks & Co. have been balanced and their checks surrendered?

Answer. These books have been balanced and all these checks have been returned cancelled.

Question. State what has become of the three memoranda checks drawn by you on the Commercial Bank for \$556,945, above mentioned, obtained from Mr. Carlton by the teller of the bank?

Answer. They were destroyed, as I destroy other memorandum checks when they are returned to me.

Question. Had the bank or yourself individually any interest, directly or indirectly, in the investments made by Parkman & Co., or Parkman, Brooks & Co., with the funds drawn by them from the bank, as above mentioned?

Answer. No.

Question. In the transactions above mentioned, did the bank or yourself act otherwise than as the fiscal agent of the parties in affording facilities and assistance to Parkman & Co., or Parkman, Brooks & Co.?

Answer. The bank did not, and I did not.

Cross-examined by Mr. Yerger, on behalf of Mr. Brooks:

Question. Was the subscription made September 24, 1864, in the name of the Commercial Bank?

Answer. Yes, I think it was. I admit that Mr. Carlton's books, in regard to dates, names, and amounts, are correct as to these transactions, so far as I know.

Question. Did you give your check, February 6, 1865, for \$207,000 to Mr. Carlton?

Answer. I don't remember the date, but I think the three checks of Parkman, Brooks & Co., given in exchange for mine, corresponded in date and amount with my checks surrendered.

Question. What did you give them your checks for?

Answer. I gave them as memoranda for subscriptions for the 7-30 loan, for which certificates were given to me by Carlton for the benefit of Parkman, Brooks & Co.

Question. In whose name were these subscriptions made or certificates issued, and were they not delivered to you?

Answer. I cannot state in whose name, but Mr. Carlton's books will show. Carlton issued them as he pleased.

Question. Did you authorize Mr. Carlton to put down these subscriptions in the name of the Commercial Bank of Tennessee?

Answer. I did not.

Question. Did you not receive certificates in the name of the Commercial Bank from Mr. Carlton for the three subscriptions represented by your three checks above mentioned?

Answer. I don't know. I can't remember.

Question. Why did you authorize transactions for the benefit of Parkman, Brooks & Co. to be carried on in the name of the Commercial Bank, and why did you give your individual checks for the transactions?

Answer. Because Mr. Carlton stated that he wanted to settle these things with Mr. Parkman, and Parkman was absent.

Question. Who negotiated the three certificates above spoken of, and where were they negotiated?

Answer. As well as I remember, they were negotiated in New York—one by Lawrence and St. John, one by Ainslee, cashier of the Commercial Bank, and one by Garth, teller of the said bank.

Question. What became of the moneys arising from these certificates, or from the bonds for which they were issued?

Answer. They were deposited in the Chemical Bank, New York, to the credit of the Commercial Bank in part, and the balance was returned in currency to the Commercial Bank, and placed to the credit of Parkman, Brooks & Co. on the books of the bank.

Question. Did you obtain the three checks of Parkman, Brooks & Co. given to Carlton in exchange for your check?

Answer. I did.

Question. From whom?

Answer. Mr. Learned.

Question. Who was Mr. Learned?

Answer. A partner of Parkman, Brooks & Co., as far as I know. He was acting as their clerk. His signature is on the books of the bank as partner.

Question. Did Mr. Learned sign their name to the checks?

Answer. Yes.

Question. Was Parkman or Brooks, either of them, in Memphis at the time?

Answer. I think not.

Question. Did you ever ask Parkman or Brooks to give their checks for the amount?

Answer. I never did.

Question. Did you present the checks to Carlton and ask him to make the exchange?

Answer. I did.

Question. When?

Answer. About five months ago.

Question. Did he deliver your checks to you and take Parkman, Brooks & Co.'s?

Answer. He stated the embarrassed condition of the concern of Parkman, Brooks & Co., and asked that I would help him out, and requested me to obtain orders from Parkman, Brooks & Co. on their consignees in St. Louis, Cincinnati, and New York, for the balance of proceeds of the cotton which Parkman, Brooks & Co. had shipped. He wanted me to collect the proceeds and turn it over to him here in Memphis, which I agreed to do by consent of Parkman, Brooks & Co. Learned gave me the orders for the cotton, and said that Carlton had requested him to do so. I did not sell the cotton when I went up the river, because cotton had declined, and the balance coming to Carlton would be much less than he expected; but I had the orders accepted by the merchants in St. Louis, and placed them in the hands of B. M. Runian, banker, and stated the circumstances to him and wrote to John Ainslee, cashier of the bank here, to sell the cotton only upon the order of Parkman, Brooks & Co., and to pay the money over to Carlton, by their order. A few days after that, on my arrival at

Cincinnati, I met Mr. Garth, teller of the bank, on his way to New York, who knew the circumstances, and told me that Carlton was frightened, and he thought would give me some trouble about the checks. I instructed Mr. Garth to present the checks of Parkman, Brooks & Co., which I had left home, to Carlton immediately on his return to Memphis, and say to him that if he did not give up my checks which he held, according to a previous understanding, that he, Garth, had authority from me to lay the whole matter before General Washburne and let him decide what was right to be done. The checks were given to me by Mr. Garth on my return. I got the orders upon the consignees for the cotton from Mr. Learned.

Question. Did you ever talk to either Parkman or Brooks, or get the consent of either of them to obtain the above-mentioned orders?

Answer. They were not here, and I would not have considered it necessary if they had been.

Question. Did Mr. F. W. Brooks ever talk to you about these subscriptions to 7-30 loans?

Answer. I think not before the exchange of checks.

Question. Examine the paper herewith shown you, marked "Exhibit No. 1," and state whether a copy of the same was served on you, and when.

Answer. I know there was a copy of a similar paper served on me, but it was after the exchange of checks and when trouble was anticipated in Carlton's office about the sale of these bonds.

Re-examined by counsel for the bank:

Question. State the purposes for which you obtained these checks of Parkman, Brooks & Co., and whether they were designed for drawing money from the bank.

Answer. I obtained them to give to Carlton in lieu of my checks which he held, in order that the credit on the books of the bank might be transferred from my account to the account of Parkman, Brooks & Co., so that the accounts might stand balanced according to the understanding and agreement in the course of the business with Carlton. My credit could not be transferred to account of Parkman, Brooks & Co. until I received their voucher for it. These checks were not designed to draw money from the bank, but for the purposes already mentioned.

Question. State whether you returned from the east in May last, or shortly after, and received a note from Mr. Carlton, why you did not reply to it.

Answer. I did receive a note from Mr. Carlton shortly after my return, which was personally offensive, to which I did not reply in writing, but sent word by Mr. Parkman to Carlton that I was to be found at the Commercial Bank between the hours of 9 and 3 o'clock, and that the statements in the note were unfounded in fact.

Question. Why did you cease some four months ago your banking facilities, in aid of this cotton enterprise, by negotiating government bonds for Mr. Carlton, and Parkman & Co.?

Answer. Because I had become satisfied in my own mind that Carlton was using government funds.

Examination postponed to Thursday morning at 9 o'clock.

THURSDAY MORNING, *August 10, 1865.*

Adjourned to 2 o'clock this p. m.

2 o'clock p. m.

Examination resumed of Mr. Page:

Question. State what day you left Memphis for St. Louis and Cincinnati.

Answer. I can't state the day, but can find out from the books of the bank.

It was five months ago. On reference to my books I find it was about the 15th of April last.

Question. Did you get those three checks from Larned before you went on that journey; and if so, how long before?

Answer. I got them before I went on the journey—perhaps a week before, or from five to eight days.

Question. How long before that time had the funds which you let Parkman & Co. have been drawn out of the bank?

Answer. They were drawn out from time to time; an open account was kept.

Question. Did you draw out from time to time the proceeds which had been placed in the bank, the proceeds of the United States bonds?

Answer. Yes; either the cashier or myself drew them out from time to time.

Question. Were you the financial officer of the bank?

Answer. I was. The president and cashier were both financial officers, and had full authority to act for the bank.

Question. Did you direct and control the financial operations of the bank?

Answer. I did.

Question. Did you have a board of directors?

Answer. We did.

Question. How many.

Answer. Five.

Question. Are you in a habit of calling your board of directors together to direct what should be done?

Answer. Seldom. The business management of the bank was left almost wholly to my discretion.

Question. You disposed of the funds placed in the Chemical Bank, New York, by drawing drafts against it?

Answer. Yes; by selling drafts.

Question. Did you make any distinction in the funds which formed the proceeds of these three certificates for the 7-30 bonds and other funds which the Commercial Bank had to its credit in the Chemical Bank?

Answer. No, sir; no difference.

Question. Did you draw out any of these funds in the Chemical Bank in favor of Parkman & Co., or Parkman, Brooks & Co.?

Answer. We did not; we frequently sold them exchange, but we made no distinction between this money and any other money in the bank.

Question. What time did you cease furnishing Parkman & Co., or Parkman, Brooks & Co., with means, either money or drafts?

Answer. About the middle of April last; but we have had some transactions since.

Question. What transaction do you allude to as having let them have about the middle of April?

Answer. These accounts were balanced the 3d of May, but I know the business with them closed about the middle of April. Since about the middle of April there has been no considerable transaction with them; but since that time Parkman has come in and made arrangements for small amounts, giving security for it, and I have let him have the money.

Question. About what portion of the proceeds of these certificates did you receive in currency?

Answer. I don't know, but I suppose about half the amount we received in currency, and about half was deposited to our credit with the Chemical Bank. It depended upon circumstances. If exchange was scarce here we left it in New York; if currency was scarce here we bought the proceeds here in currency.

Question. In paying out the currency that you received as proceeds of these

certificates, did you make any distinction between them and other funds of the bank?

Answer. When the certificates were delivered to the bank they were the property of the bank, and no distinction was made between the proceeds and other funds.

Question. Did you ask Mr. Larned to give you the three checks that were subsequently exchanged with Carlton for your checks?

Answer. I did.

In answer to further interrogations, he states:

Mr. Larned made no objections to giving the checks. I did not give him as a reason for asking for them that we were about to convert the Commercial Bank into a national bank. I don't remember whether I gave him the date and amounts to put in the checks. They were made to correspond with my checks in Carlton's hands, and I think Larned referred to my checks to get the dates and amounts.

Carlton made out the certificates he gave me at the custom-house, I presume. They were not made out at the bank, and I don't know who made them out, or when. Carlton delivered them to me; I don't remember whether at the custom-house or in the bank. The certificates were sometimes brought to me, and sometimes I went after them. I gave my checks at the time and place when and where I got the certificates. I don't think there was any one directly present when I received the certificates and gave the checks that witnessed the transaction. I don't suppose I was ever in his office, but there was some one there. I can't say that I had any conversation with Carlton about issuing the certificates previous to the time they were issued; but when money was wanted by Parkman, Brooks & Co., he told me to furnish it and he would reimburse the bank.

Re-examined by counsel for the Commercial Bank.

In answer to interrogations, the witness says:

I had no knowledge of how Mr. Carlton kept his accounts square with the government during the time I was receiving certificates from him as stated in my direct examination. Prior to the date of my receiving from him the last certificate, and up to the time of my taking the last government bond from him, all drafts on him from the government had been paid, so far as I know. The first suspicion I had that Mr. Carlton was disposing of these treasury bonds improperly was about four or five months ago—near the time when I had the checks exchanged. When I first became suspicious of this matter, I took counsel of my legal adviser, Mr. Postern, and from that time I refused to have any further transactions in regard to subscriptions to these treasury bonds. After this time, both Mr. Carlton and Mr. Parkman came to the bank and urged me to take more of these bonds, which I refused to do. Parkman came and urged this more than once. They paid John Ainslee after this to go on to New York and negotiate the certificates for Mr. Parkman and Mr. Carlton. My means of knowledge on this subject are Mr. Parkman and Mr. Ainslee.

Question by Mr. Yerger. Turn to the entry in your bank book, and show the signature of Mr. Learned on the books of the bank as partner of Parkman, Brooks & Co.

Witness produces the book containing the signature of "Parkman, Brooks & Co.," which witness says is in the handwriting of Mr. Learned. The book is one kept for the purpose of keeping a register of the signatures of depositors, and those doing business with the bank.

J. W. PAGE, JR.

Subscribed and sworn to before me.

H. A. RISLEY,
Supervising Special Agent.

EXHIBIT No. 1.

MEMPHIS, TENNESSEE, *May* 26, 1865.

GENTLEMEN: I have just learned that the Commercial Bank had subscribed with G. N. Carlton, esq., for the 7-30 United States government loan, to the amount of five hundred and fifty thousand dollars, for the payment of which Mr. Carlton received the checks of Mr. Page aforesaid upon this bank; that these certificates were given at different times, unbeknown to the company. That subsequently, during the temporary absence of those who were known by the copartnership contract were the managing members of the company, these checks were exchanged for those purporting to be Parkman, Brooks & Co.'s, which, though we have not seen are informed, after having been antedated, were put in the hands of Mr. Carlton. If such be the case, they were not drawn by the company, or any member of the company—none of whom, without the consent of *all*, would have had a right to use the credit or funds of the company to invest or speculate in government securities.

If said checks were given by any employé of the company, they were done without our authority, knowledge, or consent. And we would lose no time in informing you we ignore and repudiate the whole transaction, and will in no way hold ourselves responsible therefor.

We likewise protest against the entries made in our bank book as incorrect, and will accept none save they accord with the facts. The liabilities as per entries of Parkman & Co. will not be assumed by Parkman, Brooks & Co.

Any checks drawn, other than against the actual funds of Parkman, Brooks & Co., in bank, or by other than Mr. Parkman or Mr. Brooks, you will in no way recognize.

Respectfully,

PARKMAN, BROOKS & CO.,
Per F. W. BROOKS—BROOKS & CO.

J. W. PAGE, Jr., Esq., *President*, and
JOHN AINSLEE, *Cashier*, *Commercial Bank*, *Memphis*, *Tenn.*

I served the original, of which this letter is a copy, on the Commercial Bank at Memphis, May 30, 1865.

HENRY J. LYNN.

Deposition of Horace E. Garth.

The said Horace E. Garth, having been duly sworn that the evidence he shall give on the investigation pending before me, on behalf of the United States, shall be the truth, the whole truth, and nothing but the truth, deposes and says:

Question. Have you been in the employment of the Commercial Bank of Tennessee? If so, in what capacity, and for what length of time?

Answer. I have been in the employment of the bank, first as teller, from the 15th May, 1863, until the 1st of July, 1865, next as cashier, down to the present time.

Question. Were deposits made in said bank by George N. Carlton to his individual credit? If yea, when, in what amounts, for what purpose, and with what understanding?

Answer. Yes; such deposits were made about eighteen months ago. He made deposits commencing December 19, 1863, and running up to April 13, 1864, and drew checks from time to time against such deposits. After such deposits amounted to \$100,000. He left a hundred thousand dollars all the time undrawn, up to April 13, when he drew the balance that was to his credit. The

purpose was, that Parkman & Co. could overdraw their account to the extent of \$100,000, and the money to Carlton's credit should stand as security for such overdrafts. If Carlton's checks came in while Parkman & Co.'s accounts were overdrawn, I was instructed not to pay them, so as to reduce the fund below \$100,000.

In answer to further interrogations, witness says :

On the 13th of April, 1864, when Carlton drew his deposits in the bank, Page in the evening brought in \$100,000, and I put it to Page's individual credit, to stand as security for Parkman & Co.'s overdrafts to that amount. I remarked to Mr. Page at the time that it looked like the same money I paid out in the morning. Page remarked that I knew where it came from. I don't recollect what became of this fund. I have knowledge of sales of the United States bonds made by Carlton, which were negotiated by the Commercial Bank. We collected several of the certificates, sold the bonds, and the proceeds were placed to the credit of Parkman & Co., with the exception of three transactions, as near as I can recollect, and in these last-mentioned transactions the proceeds, when sold, were at the time placed to the credit of Mr. Page on the books of the bank, and afterwards transferred to the credit of Parkman & Co. They were placed to Mr. Page's credit, from the fact that Mr. Page's memorandum check was given to Mr. Carlton, with instructions from Mr. Page, if they came in, not to pay them in money, but the checks were to be passed to the credit of Parkman & Co., as the money represented by these checks belonged to Parkman & Co. although put to Page's credit, from the fact that his memorandum checks were out. The checks referred to amounted to \$556,945—there were three of them. The funds remained to Mr. Page's credit two or three months before they were transferred to the credit of Parkman & Co. as well as I now recollect. They were finally transferred, when Mr. Carlton exchanged the memorandum checks of Page for the checks of Parkman, Brooks & Co., or about that time. The transfer on the books was made on the 14th of April, 1865. I presented to Mr. Carlton the checks of Parkman, Brooks & Co., of which copies were exhibited to me, and made exhibits on this examination, after I returned from New York, and after the money had been transferred to Parkman & Co.'s credit I think. The transfer was made, I believe, after Page left; I can't tell whether the transfer was prior or subsequent to the exchange of the checks. At the time I presented the checks of Parkman, Brooks & Co. to Mr. Carlton, I told him I wanted to exchange them with him for the checks he held of Mr. Page's. He refused to make the exchange at first. I told him that he knew well that the subscriptions were made for the benefit of Parkman, Brooks & Co., and not Mr. Page or the bank, and told him that, if he did not make the exchange, I was instructed by Mr. Page to lay the matter before General Washburn. He told me if I would give him until one o'clock p. m. (this was about 11 o'clock a. m.) to consider, he would determine. He handed me the checks, and told me if he did not call for them before one o'clock, p. m., I could keep them. He at the same time took the Parkman, Brooks & Co. checks. He did not call before one o'clock, and I considered the matter closed. These subscriptions were made for the benefit of Parkman & Co. The funds were drawn out by the checks of Parkman & Co. and Parkman, Brooks & Co., both accounts being kept in the name of Parkman & Co. There are none of these funds now in the Commercial Bank belonging to Parkman & Co. or Parkman, Brooks & Co., Mr. Carlton or the government. The accounts of Parkman & Co. have, since the transactions to which I have referred, been balanced, and the pass-book adjusted, and with the cancelled checks returned to the parties, and no objection was made by them. Parkman, Brooks and Larned transacted the business of the firms mostly. Mr. Larned was acting in the capacity of partner. He signed the checks of the firm in that capacity. His signature is on the books of the

bank as a partner, that is to say, the signature of Parkman, Brooks & Co., and I think Parkman & Co. signed in the handwriting of Larned; I have seen him write, and am familiar with his handwriting. Mr. Carlton came to me since the giving of his deposition, and asked me, "Are you a friend of mine?" I answered, "Yes." He said, "I have stated under oath that when you came to exchange the checks, you did not say anything about the matter being referred to General Washburn." I answered, that I did state to him that I would have to refer the matter to General Washburn, and that I would have to make the same statement under oath if called on, or to that effect.

Cross-examined by Mr. Tucker.

In answer to interrogations the witness says:

On the 26th of December, 1863, the ledger balance against the firm of Parkman, Brooks & Co. on the books of the bank, over and above all credits, was \$232,858 32; on the 1st of January, 1864, the balance against them was \$240,794 52; on the 19th of January, 1864, the balance against them was \$361,444 15; on the 9th of March it was \$374,103 84; on the 18th of March it was \$338,470 94; on the 29th of April it was \$338,454 86; on the 13th April, 1864, when Carlton drew his balance, it was \$379,056 94; on the 31st of May, 1864, it was \$302,616 87; on the 16th of June, 1864, it was \$275,134 40; on the 26th of July, 1864, it was \$234,804 43; on the 17th of August, 1864, it was \$268,727 35; on the 24th of October, 1864, it was \$232,854 77; on the 10th of December, 1864, it was \$270,450 64; on the 3d of January, 1865, it was \$345,369 55; on the 2d of March, 1865, it was \$517,444 81; on the 3d of May, 1865, it was \$2,051 16; on the 28th of June, 1865, it was \$1,940 92.

I can't say when I first had knowledge of sales of the 7-30 bonds for which these checks were given. I saw one of the certificates at the Commercial Bank. I knew from Mr. Page that the credit of the proceeds was to go to Parkman & Co. Mr. Page told me, in reference to the three transactions amounting to \$556,945, that the credit was for the time to be made to him (Page) because his memorandum check was out, but the transaction was for the benefit of Parkman & Co., and the proceeds were eventually to go to their credit. Carlton's deposits were always made in his own name and to his own credit.

Question. How did you know that the deposits made by Carlton and placed to his credit were for the benefit of Parkman & Co.?

Answer. Mr. Page told me so. I had no other knowledge of it.

Question. How did you know that Carlton's deposits to the extent of \$100,000 were to stand as security for over-drafts of Parkman & Co.?

Answer. I knew it from Mr. Page, and had no other knowledge of it.

Question. How did you know that the three certificates that were delivered to the bank for the 7-30 loan, amounting to \$556,945, was for the benefit of Parkman & Co.?

Answer. When I put the money to Page's credit, he told me that he would not check it out; that he had given Carlton his memorandum checks, for the amount was eventually to go to the credit of Parkman & Co.

Question. In whose name were the three certificates issued?

Answer. I do not know.

Question. How do you know that these three memorandum checks given for the 7-30 loan were given as memorandum checks?

Answer. I know it from Mr. Page.

Question. Were they any different in form from ordinary checks on the bank?

Answer. None at all, except they were not stamped.

Question. Had you any knowledge of any of these various transactions, of the subscriptions to the 7-30 loan, the purpose of Mr. Carlton's deposits, the transfer of proceeds to the credit of Parkman & Co., and the fact that Mr. Page's

checks were only memorandum checks, except such as you derived from Mr. Page?

Answer. None, except such as were derived from Mr. Page, and Mr. Ainslee, the cashier of the Commercial Bank.

Question. Does this answer include the \$100,000 deposited to Page's credit by Page, which you supposed was the same money paid to Carlton on his check in the morning?

Answer. Yes; I got my information from the same source, and I suppose it was the same money I paid out in the morning.

Question. When you say that Mr. Larned signed the name of Parkman & Co., as a partner of the firm, what do you mean?

Answer. I mean that he wrote the names in the signature book of the bank of "Parkman & Co.," and "Parkman, Brooks & Co.," and signed checks in the firm's name, and the checks were cancelled and returned to Parkman & Co., or Parkman, Brooks & Co., without objection.

Question. Had Larned the principal charge of the business of Parkman & Co. with the bank?

Answer. He had in the absence of Parkman and Brooks, and while they were here he acted as any other partner.

Question. When did you become acquainted with the handwriting of Larned?

Answer. I can't say.

Question. At whose request was it that Mr. Larned put down the signature of Parkman & Co., and Parkman, Brooks & Co., in the signature book of the bank?

Answer. I don't know. I think the cashier was in the bank when he signed it. I don't know the time. I can't tell whether it was before or after the exchange of checks with Carlton. I knew his handwriting before the name of Parkman & Co. was written in the signature book. I suppose he drew checks in the name of Parkman, Brooks & Co. after the firm's name was written in the signature book, but don't know. He had drawn checks in the name of Parkman, Brooks & Co., and Parkman & Co., before writing the firm's names in the books. I knew he was a partner by his acts, and Parkman & Brooks had balanced their copartnership accounts at the bank in which checks had been signed by him, without objection. I had no other knowledge than the fact that he signed the firm's name, and the checks had been recognized by Parkman & Brooks, as though he were a partner.

Question. Did you write up the pass-book of Parkman & Co.?

Answer. I did not, and don't know who did.

Question. You don't know what clerk balanced the pass-book without reference to books and dates? Was Mr. Page in the habit of writing up the pass-book of Parkman & Co.?

Answer. He never did.

Cross-examined by Mr. Foute:

Question. In the statement which you make in regard to what you said to Mr. Carlton at the time you called upon him in regard to the exchange of checks, as to the instructions given you by Mr. Page what to say to him, was all you were authorized to say by Mr. Page, or was that all that you did say?

Answer. I think I carried out his instructions. I don't think I was instructed to say anything more to Mr. Carlton, or that I did say anything more.

Question. Since the commencement of this investigation, and since Mr. Page has been examined as a witness, have you not had conference with him, and been advised by him as to the particular points upon which you would be interrogated as a witness? If so, state fully what he said to you upon said conference.

Answer. Mr. Page and myself have had daily conversations in regard to this

investigation, but I have not been advised by him as to the particular points upon which I would be examined. We have talked in general terms about it every day, and Mr. Page knew what I would testify to before the examination, or, in other words, he knew what facts were within my knowledge.

By counsel for Commercial Bank :

Question. Examine the three original letters here exhibited to you, copies of which are herewith attached, and for identity marked A, B, and C, addressed by Parkman, Brooks & Co. to Messrs. Corronna, Taussing & Co., of the dates of April 27, 29, and May 8, 1865, and state in whose handwriting these original letters are.

Answer. They are in the handwriting of Mr. Larned.

Cross-examined by Mr. Kartrecht :

Question. Will you turn to the account of Parkman & Co., on the books of the bank of the date of September 24, 1864, and state any credit after that date as large as \$100,000, and state its amount and date?

Answer. There is no credit as large as \$100,000 until March 8, 1865, when I find a credit for \$100,000.

Question. Do the books show the source of that \$100,000?

Answer. They do not.

Question. Now state the largest credit to Parkman & Co., from September 24, 1864, to March 8, 1865, its date and amount.

Answer. \$93,827 50 was credited to them on the books of the bank on the 6th of March, 1865.

Question. Name all the credits of Parkman & Co., commencing September 24, 1864, that amount to \$40,000 and upwards.

Answer. November 28, 1864, they were credited \$56,852 54 ; December 21, 1864, they were credited \$41,790 ; December 30, 1864, they were credited \$40,000 ; January 15, 1865, they were credited \$39,480 ; January 15, 1865, they were credited \$9,925 ; January 16, 1865, they were credited \$39,480 ; January 19, 1865, they were credited \$34,457 50 ; March 2, 1865, they were credited \$54,353 75 ; March 4, 1865, they were credited \$93,827 50 ; March 8, 1865, they were credited \$100,000 ; March 11, 1865, they were credited \$50,000 ; March 14, 1865, they were credited \$50,000 ; March 18, 1865, they were credited \$75,000 ; March 21, 1865, they were credited \$63,107 50 ; March 21, 1865, they were credited \$49,302 50 ; April 13, 1865, they were credited \$98,345 ; April 14, 1865, they were credited \$458,600. I know some of them are proceeds of sales of United States bonds. I know the last two are, and some others. The last two entries were entered in the books of the bank at their respective dates, and I cannot pick out any other entries except the last two, that I know or can identify as being the proceeds of government bonds. The reason why, because the books of the bank do not show the sources from which the proceeds arise. The books do not show in case of the two entries that I can identify, but I remember these two items from Mr. Page's instructions concerning them.

H. E. GARTH.

Subscribed and sworn before me.

H. A. RISLEY,
Supervising Special Agent.

EXHIBIT B.

MEMPHIS, TENN., *April 14, 1865.*

GENTS: Pursuant to our request under date of the 7th inst., you will please hold all our cotton you may have in your hands, and under your control, subject

to the order of J. W. Page, jr., president of the Commercial Bank of this city, and when sold place the net proceeds thereof, over and above your advances, charges, &c., to the credit of that bank.

Yours, truly,

PARKMAN & CO.

Messrs. HAMILTON & DUNNICA, *St. Louis.*

EXHIBIT C.

MEMPHIS, TENN., *April 14, 1865.*

GENTS: Pursuant to our request under date of the 8th inst., you will please hold all our cotton you may have in your hands, and under your control, subject to the order of J. W. Page, jr., president of the Commercial Bank of this city, and when sold place the net proceeds thereof, over and above your advances, charges, &c., to the credit of that bank.

Yours, truly,

PARKMAN & CO.

Messrs. PITMAN & BROTHER, *St. Louis.*

Deposition of James B. Ritson.

The said James B. Ritson, having been duly sworn that the evidence he shall give on the investigation pending before me, on behalf of the United States, shall be the truth, the whole truth, and nothing but the truth, deposes and says: In answer to interrogations by Mr. Bartley on behalf of the Commercial Bank, he says:

I am the individual book-keeper of the Commercial Bank, and have been such since October, 1863. The proceeds of the sales of the United States bonds taken by the bank from Mr. Carlton were placed to the credit of Mr. Jesse Page, jr., on the books of the bank, and from there they were transferred to the credit of Parkman, Brooks & Co. These funds were drawn out of the bank on checks of Parkman, Brooks & Co., while the proceeds stood in the name of Page on the books of the bank. It was understood by the officers and clerks in the bank that they were for the benefit of Parkman, Brooks & Co., and were to stand as security for Parkman, Brooks & Co.'s over-drafts on their account. The reason why it stood in Mr. Page's name was, that Page's check was out for the money, and when Page's check was lifted or adjusted the money was transferred to the credit of Parkman, Brooks & Co., on the books of the bank. I don't remember about any checks of Mr. Page being out in the hands of Mr. Carlton which were not to be paid. But I was instructed by the officers of the bank that the checks which Mr. Carlton had of Mr. Page for the amount of the bonds was not to be paid, but that Parkman, Brooks & Co.'s checks were to be given for them.

Question. If Page's checks were not to be paid, in what character did they stand?

Answer. As memorandum checks. It is usual in banking business to have memorandum checks. I never was employed in any other bank but the Commercial Bank.

Question. State what the understanding and instructions of the officers and clerks of the bank were as to Mr. Carlton's deposits, made at different times, some twelve or eighteen months ago, or to the especial purpose of the deposits to the amount of \$100,000.

Answer. That it stand against the checks of Parkman, Brooks & Co. for that amount, and for their benefit.

Question. What has become of the money deposited by Mr. Carlton in the bank to the amount of \$100,000 in currency, as above mentioned, and what has become of the proceeds of the sale of the treasury bonds made by Mr. Carlton to the bank?

Answer. It was all absorbed by Parkman, Brooks & Co.'s over-checks.

Question. Does the bank hold any of the funds yet which came from Mr. Carlton to the bank for the benefit of Parkman, Brooks & Co., as above mentioned?

Answer. No, it does not.

Question. Had the bank any interest in these funds which came directly or indirectly from Mr. Carlton for the benefit of Parkman, Brooks & Co., except as the mere banker of the parties?

Answer. No, it had not.

Question. Had the bank any interest in the cotton operations of Parkman, Brooks & Co., except so far as it acted as the banker of the parties?

Answer. No, it had not. All that I know is in and from the books of the bank, and if the bank had any interest it would appear on the books.

Question. Who paid the discount or loss in the sale of these treasury bonds in New York?

Answer. I believe Parkman, Brooks & Co. did by giving their checks. I have no recollection of a check or checks for this amount. I could not tell when these checks were given.

Question. What knowledge have you about the signature of Parkman, Brooks & Co., made by Mr. Larned as a member of that firm, being left in the signature book of the Commercial Bank?

Answer. I don't know whether it was ever left there. Upon referring to the signature book of the bank I find the firm's name of Parkman, Brooks & Co. in the handwriting of Mr. Larned; I have seen him write and know his handwriting.

Question. What further knowledge have you, if any, of Mr. Larned doing business with the bank as a partner of Parkman, Brooks & Co.?

Answer. I don't know of any other than his signing checks in the name of Parkman & Co., drawn on the bank.

Question. Were these checks received and settled in the bank in the account of Parkman, Brooks & Co.?

Answer. Yes, they were, and no objection was ever raised about them. The checks of Parkman & Co., and of Parkman, Brooks & Co., were all thrown into one account and settled together in the name of Parkman & Co. A good many checks were signed Parkman, Brooks & Co.

Question. Who was charged with the interest account of Parkman & Co. in the bank, and who settled it?

Answer. The account in the bank was all kept in the name of Parkman & Co., and Parkman, Brooks & Co. did the business in the bank in the name of Parkman & Co., and the interest account was charged up and recognized, and settled without objection.

Examination by counsel for G. N. Carlton:

Question. When were you first advised that you would be called as a witness in this investigation, and who informed you?

Answer. Mr. Page first informed me, about last Thursday or Friday.

Question. What did Mr. Page say to you when he informed you that you would be called as a witness?

Answer. He simply said that I would be called as a witness. He said nothing further.

Question. Have you not been advised or talked with by Mr. Page, or any of

his friends, as to the particular points or facts upon which you might be interrogated?

Answer. Yes, I have. I was told by Mr. Page that I would be called upon to testify as to the accounts on the ledger and books of the bank. This is all that he or any one else said to me on the subject.

Examination by counsel for Parkman :

Question. Have you any personal knowledge that either E. Parkman or F. W. Brooks ever assented that the deposits and checks, the credits and debits, of Parkman & Co., and Parkman, Brooks & Co., should be kept or thrown into one account?

Answer. No; I do not know whether there was any understanding about that or not. I do not personally know that either Parkman or Brooks ever assented to it.

Question. By whose direction was it that the deposits and checks of Parkman & Co., and Parkman, Brooks & Co., were entered upon the books in the same account?

Answer. By direction of Mr. Page.

Question. Did your position in the bank enable you to know anything of its affairs, except what you learned from the books, and from instructions from its officers, as to the entries you should make in them?

Answer. No, sir.

AUGUST 11, 1865.

Examination of James B. Ritson continued.

Questions by Mr. Yerger, counsel for Mr. Brooks :

Question. Who directed the proceeds of the sales of the United States bonds, taken by the bank from Carlton, to be placed to the credit of Jesse Page, jr., on the books of the Commercial Bank?

Answer. I do not know.

Question. Who directed that they be transferred to Parkman, Brooks & Co.?

Answer. That I do not know.

Question. What particular bonds do you refer to; what was the date of the subscription?

Answer. I do not know; I don't allude to any particular bonds.

Question. At what time were these transfers made to Parkman, Brooks & Co.?

Answer. I do not recollect.

Question. From whom did the officers and clerks of the bank understand that while these proceeds stood to the credit of Page, they were for the benefit of Parkman, Brooks & Co., or to stand as security for the over-drafts of Parkman, Brooks & Co.?

Answer. I cannot say; I got my information from Mr. Garth; he was the only one from whom I understood it, although I heard others say it afterwards.

Question. Do you know anything of three subscriptions made by Mr. Page for 7-30 United States bonds in February, March, and April last, amounting in the aggregate to \$556,945?

Answer. No; I do not know anything about it at all.

Question. Do you know that Mr. Page gave his three checks in these transactions?

Answer. I do not, of my own knowledge.

Question. Were these the checks that you said you were instructed by the officers of the bank were not to be paid, but that Parkman, Brooks & Co.'s checks were to be given for them?

Answer. I believe they were.

Question. What officers of the bank gave you these instructions?

Answer. Mr. Garth, the teller.

Question. Was it your business to pay checks?

Answer. No, it was not, and I never did pay any.

Question. Why, then, did the officers give you any instructions not to pay them?

Answer. They did not give me any instructions, as it was not my place to pay checks.

Question. What do you know, of your own knowledge, that Carlton deposited \$100,000 or over, some 12 to 18 months ago?

Answer. I only know from the books.

Question. You say that that \$100,000 and the proceeds of sales of treasury bonds made by Carlton to the bank were all absorbed by Parkman, Brooks & Co.'s over-checks; are you certain that is so, and how do you know it?

Answer. I know it from the books of the bank.

Question. How do you know that the bank had no interest in the funds which came from Carlton for the benefit of Parkman, Brooks & Co., except as they were the banker of the parties?

Answer. Because those funds all went to the credit of Parkman, Brooks & Co.; that is the only means of my knowledge on the subject.

Question. Were the funds placed to the credit of Parkman, Brooks & Co. all at one time or at different dates?

Answer. All at one time, I believe. I can tell by referring to the books.

Question. Please refer to the books. How do you find it?

Answer. On the 13th of April, 1865, there is one credit of..... \$98,345
On the 14th of April, 1865, there is a credit of..... \$251,600 } 458,600
207,000 }

556,945

Question. Do you know of your own knowledge that Mr. Larned was a member of the firm of Parkman, Brooks & Co.?

Answer. I do not, except so far as his signing checks on the bank in the name of Parkman & Co. I do not believe I ever saw a check of Parkman, Brooks & Co. signed in the handwriting of Larned.

By Mr. Postern:

Question. In speaking in your examination in chief you refer to instructions as given to you particularly. Are we to understand from this that you design to convey the idea that such instructions were so delivered to you individually, or that you spoke of the instructions given to the officers of the bank generally in your presence?

Answer. I speak of instructions given generally to officers of the bank. They never gave any such instructions to me individually.

J. B. RITSON.

Subscribed and sworn before me.

H. A. RISLEY,
Supervising Special Agent.

Deposition of Eugene E. Jones.

The said Eugene E. Jones, having been duly sworn that the evidence he shall give on the investigation pending before me, on behalf of the United States, shall be the truth, the whole truth, and nothing but the truth, deposes and says:

Counsel for Commercial Bank interrogates witness:

Question. State your business connexion with the Commercial Bank of Tennessee, and how long it has existed.

Answer. I have been general book-keeper for over one year, and have been connected with the bank for over five years. Before I was general book-keeper I was collection clerk.

Question. State what you know of Mr. G. N. Carlton's depositing money in the bank for the benefit of Parkman & Co., or Parkman, Brooks & Co.?

Answer. I know that Carlton deposited money to the amount of \$100,000, as I understand, to cover the overdrafts of Parkman, Brooks & Co. in the bank. The deposits commenced in December, 1863. The deposits for that month sum up \$183,170 47; \$100,000 of this sum was left for the benefit of Parkman, Brooks & Co., and this amount stood for that purpose until the 13th of April, 1864.

Question. When this \$100,000 was checked out by Mr. Carlton, on the 13th of April, 1864, to whose credit was it carried in the books of the bank, if to that of any one?

Answer. I think to the credit of Mr. Page, to the best of my knowledge and belief.

Question. For whose benefit did that credit on the books of the bank stand?

Answer. I understood for the benefit of Parkman, Brooks & Co. This I learned from the officers of the bank, Mr. Ainslee, cashier, and Mr. Garth, teller, and from no other source. I was acting under the direction of Mr. Page, president of the bank, and under the cashier and teller.

Question. What became of this credit on the books of the bank to Mr. Page of \$100,000?

Answer. It was transferred to Parkman, Brooks & Co.'s account on the check of Mr. Page, 13th of October, 1864.

Question. State what knowledge you have on the subject of the bank taking from Mr. Carlton United States treasury bonds to be negotiated for the benefit of Parkman & Co., or Parkman, Brooks & Co.

Answer. I know there were several subscriptions made for the benefit of Parkman & Co. and Parkman, Brooks & Co. I derived my information in regard to these subscriptions from the officers of the bank, and what they said. I mean the cashier and teller, Mr. Ainslee and Mr. Garth. This was the knowledge in the bank at the time upon which the bank was transacting this business. I cannot state the amounts of these treasury bonds, nor the particular times of the transactions.

Question. State to whose credit in the bank were the proceeds of the sales of these bonds first placed, and what became of these credits afterwards?

Answer. A portion of them were first placed to the credit of Mr. Page; they were afterwards placed to account of Parkman & Co.; they were afterwards checked out by Parkham & Co. I saw the checks and the credits, and witnessed the transaction in this way, by seeing said checks and credits.

Question. Was this a matter well understood in the bank at the time, and how do you know the fact?

Answer. It was well understood in the bank. I know this from hearing it generally talked of by all the employes of the bank.

Question. Does any portion of the proceeds of these treasury bonds, thus negotiated for the benefit of Parkman & Co., remain in the bank, or was it all checked out by them?

Answer. None of these proceeds remain in the bank. It was all checked out by Parkman & Co.

Question. Who paid or lost the discounts in the negotiation of these bonds in New York?

Answer. The discount was paid by Parkman & Co. either by check on the bank or in funds. I know this from placing the credit to the Chemical Bank, in New York, where the proceeds of the bonds were deposited, and from the fact of my collecting sometimes the discounts from Parkman & Co., and by

sometimes getting the money from them for that purpose, and at other times getting their checks on the bank for the amounts of such discounts.

Question. State what knowledge existed in the bank as to Mr. Carlton's holding the memorandum checks of Mr. Page for the amount of these treasury bonds, while the credit stood in the name of Mr. Page on the books of the bank.

Answer. I understood from Mr. Garth, teller of the bank, that Mr. Carlton held Mr. Page's check, I do not know for what amount, for the proceeds of these treasury bonds, which were to be taken up by the checks of Parkman & Co. I do not know about what time this was. I have no idea of the time when I got this information from Mr. Garth, that is, I have no idea of the date. I think it was about the time of the transaction.

Question. Was this fact of Mr. Carlton's holding Mr. Page's memorandum checks spoken of in the bank by any one else than Mr. Garth?

Answer. Not to my knowledge. I never heard any one else speak of it but Mr. Garth.

Question. Do you remember what Mr. Garth said when he spoke of the matter?

Answer. I remember Mr. Garth's telling me that Carlton had Page's checks, nothing else.

Question. What kind of checks did he say he had, and what was to be done with them, or for what purpose were they to be held?

Answer. He said Page's memorandum checks which were to be taken up by Parkman & Co.

Question. What do you know about Mr. Larned being a member of the firm of Parkman & Co.?

Answer. I always considered Mr. Larned a partner of that firm, from the fact of seeing him transact their business and sign their name. I know that the signature of Parkman, Brooks & Co. was put by Mr. Larned on the "signature book" of the bank. I did not see him put this signature in the book, but I know his handwriting, and know this to be his. I cannot state the time when this signature was put upon the books. I have seen Larned sign checks, in the name of Parkman & Co., on the Commercial Bank. I have seen him sign checks, and also others which I knew he had signed.

Question. In the settlements and balancing bank books with Parkman & Co., were any objections ever made to the checks of Larned as a member of the firm?

Answer. None that I ever heard of.

Question. What have you ever heard Mr. Larned say about his being a member of the firm of Parkman & Co., and about the business of the firm?

[Objected to by counsel of Brooks and Parkman. Objections reserved, and examination proceeded.]

Answer. I don't remember ever having heard him say anything about being a member of the firm. I have heard him talk about their cotton affairs in their office. He spoke generally, not as to any particular matter.

Examined by counsel for Brooks :

Question. How do you know that the deposit for \$100,000 by Carlton was made to cover the overdrafts of Parkman, Brooks & Co., or was left for their benefit in the bank?

Answer. I have heard Mr. Ainslee and Mr. Garth both speak of it as for that purpose. That is the only way I know it.

Question. You say that deposit was checked out by Carlton on the 13th of April, 1864, and was on that day put to credit of Mr. Page as you think, and that that sum was transferred for the benefit of Parkman & Co. on the 13th of October, 1864; now give an exact copy of the entry of that transfer from the books.

Answer. (Copy.) "Date, October 13, 1864, to Mr. Page's check, \$110,010." It does not appear that it was placed to the credit of Parkman, Brooks & Co., of that date, or to Parkman & Co., or at any other time, nor to the credit of any one else from the books.

Question. Then why do you say that it was transferred to Parkman, Brooks & Co.'s account on the check of Mr. Page of date 13th of October, 1864?

Answer. Because I understood the transaction was for the benefit of Parkman & Co. I understood it from either Mr. Ainslee, the cashier, Mr. Ritson, the individual book-keeper, or Mr. Garth, the teller, I do not recollect from which.

Question. State what the one of these who told you this said about this matter, and about what time he said it?

Answer. It was told to me about the time the check was charged to account of Page. The one who told me said it was for the benefit of Parkman & Co. There were three of Page's checks of that date, which I think were for the benefit of Parkman & Co.; I do not know.

Question. How do you know these three checks of \$110,010 drawn by Page on the 13th of October, 1864, included that \$100,000 deposit of Carlton?

Answer. Because the money that was put to Page's credit by Carlton constituted mostly all the money which Page had to his credit in the bank. I do not know it from any other source.

Question. Where did the extra \$10,010 come from, constituting the amount of these three checks?

Answer. I don't know where it came from.

Question. Why was it left to the credit of Page before it was transferred for the space of six months?

Answer. It was to cover Parkman & Co.'s over-drafts, and not to be checked out.

E. E. JONES.

Subscribed and sworn before me.

H. A. RISLEY,
Supervising Special Agent.

Deposition of Pascal P. Learned.

Pascal P. Learned, being duly sworn that the evidence he shall give on the investigation pending before me on behalf of the United States shall be the truth, the whole truth, and nothing but the truth, deposes and says:

In the early part of April last past, Mr. Frank W. Brooks, of the firm of Parkman, Brooks & Co., consigned a cargo of cotton, which Mr. E. Parkman of the same firm had sent forward to Memphis, to Messrs. Hamilton & Dunnican, of St. Louis. Afterwards, Mr. Brooks made an arrangement with Mr. Hamilton, who was then in Memphis, to turn over to Messrs. Corronna, Taussig & Co. of St. Louis, four hundred bales of the same cotton. After this had been done, Mr. J. W. Page, jr., who had assumed the general direction of the cotton business of Parkman, Brooks & Co. in Mr. Parkman's absence, called on me on the morning of the 7th of the above-named month, and requested me to write a letter to Messrs. Corronna, Taussig & Co., in the name of Parkman, Brooks & Co., recognizing the arrangement made by Mr. Brooks, and furthermore, to make the request which is set forth in a copy of the letter below. I objected to comply with this request on the ground that I was not of the firm of Parkman, Brooks & Co.; that I had never signed or used the name of that firm, nor did I feel at liberty to do so. Mr. Page urged me; said he was apprehensive outside parties having claims against Parkman, Brooks & Co. would put an attachment on the cotton, and that it was all-important that *we* (speaking as one of

the firm of Parkman, Brooks & Co.) should keep control of the cotton. I asked him (Mr. Page) what kind of a letter he wanted written, and requested him to write out what he wanted me to write, which he did. I then asked him why it would not do as well to sign the name of Parkman & Co. to the letter, which name Mr. Parkman had authorized me to use in his absence in matters pertaining to the cotton business. Mr. Page replied that would not do, as the arrangement by Mr. Brooks had been made in the name of Parkman, Brooks & Co., and that Messrs. Corronna, Taussig & Co. would not recognize the name of Parkman & Co. in the transaction. In view of these considerations, which Mr. Page urged with much earnestness, and also in view of the fact that, as one of the firm of Parkman, Brooks & Co., as I had always considered him, he authorized and requested me, I wrote, or rather copied, substantially what he had written, of which the following is a true copy :

MEMPHIS, *Tenn.*, April 7, 1865.

GENTLEMEN: By an arrangement made with Messrs. Hamilton & Dunnica, you have their Mr. Hamilton's order for 400 bales cotton of the cargo of the str. Olive Branch on her arrival at St. Louis, on which you have advanced to us the sum of \$30,000. You will please hold this cotton subject to the order of J. W. Page, jr., president of the Commercial Bank of this city, and when sold, place the net proceeds to the credit of that bank.

Yours, truly,

PARKMAN, BROOKS & CO.

MESSRS. CORRONNA, TAUSSIG & CO., *St. Louis.*

On the 12th of the same month of April last past, at nearly the close of the day, Mr. Page called on me and said he wanted to have the account of Parkman, Brooks & Co. balanced upon the books of the bank. I asked him how he proposed to have it done. He replied that he wanted me to give him some memorandum checks which he would have passed to the credit of the firm. In the conversation which followed, he told me he wanted the checks signed in the name of Parkman, Brooks & Co. I asked him, why so? and objected, as in the case of the above letter, on the ground that I had no authority to sign the name of Parkman, Brooks & Co. He replied that he had made certain subscriptions for 7-30 United States bonds, and that he wanted the checks to correspond in date and amount to these subscriptions. I asked him if it would not answer his purpose just as well for me to sign the checks in the name of Parkman & Co. if they were to be used only as memorandum checks. He replied no; that the business by which the indebtedness had accrued was that of Parkman, Brooks & Co., and for this reason, especially, he wanted the checks made in that name. He further urged the matter upon me by saying that the books of the bank were constantly being examined by officers of the government and other persons, and if the account of Parkman, Brooks & Co. should be seen by them as it then stood on the books, they would be likely to speak of it to the injury of the bank, and that he simply wanted the checks to justify him in having their account balanced on the bank books. He further urged the importance of this consideration to the interests of the bank by saying that if any of the employés of the bank were to leave for any cause, they, too, knowing how the account stood, would be likely to speak of it to the prejudice of the bank. He further urged, and with much earnestness, that he intended soon to go north, and that it was his intention while there to make application for authority to change the bank into the "Commercial National Bank of Memphis," and that in doing this he must be able to show a clean record; that he must be able to show the bank to be in a good and safe condition, and that to do this he must have the account of Parkman, Brooks & Co. balanced up, but that if I did not sign the checks as he desired, he could not have this done, and that

this alone would defeat the object he had thus in view in regard to the bank. Upon all these considerations, urged upon me with great earnestness, and upon his (Page's) positive assurance that they were to be held only as memorandum checks and would not be used for any other purpose, he saying to me that after they had been entered upon the bank books to the credit of Parkman, Brooks & Co. he should *lock them up in his private drawer* where no one would have access to them or know where they were but he himself, I reluctantly yielded to his request and to the authority he gave me, and signed the name of Parkman, Brooks & Co. to the three checks, one dated February 6, 1865, for the sum of \$207,000; one dated March 21, 1865, for the sum of \$251,600; and one dated April 13, 1865, for the sum of \$98,345, which checks I have since seen in the possession of Mr. G. N. Carlton.

After signing these checks thus, and after signing certain others which were for money, he (Mr. Page) claimed to have paid out to certain parties connected with the cotton business as employes, and also signing a check for interest alleged by Mr. Page to be due on the bank account against Parkman, Brooks & Co., all dated on the 12th of April last past, and signed in the name of Parkman & Co., he (Mr. Page) took the bank book of the firm away with him, saying he would have it balanced up, which was accordingly done by entries made in their pass-book with the Commercial Bank in Mr. Page's own handwriting, without date:

" 200,000 7-30 Carlton.....	\$207,000."
" 250,000 7-30 Carlton.....	251,600."
" 100,000 7-30 Carlton.....	98,345."

These entries were made on three lines of the pass-book without any date prefixed, but the date of the last preceding entry was March 14, 1865, and the date of the next subsequent entry March 18, 1865. At the time he took the book to make the entries, Mr. Page said that when so balanced he wanted it put securely away in the safe, where it would not be seen, and that he would give me a new bank book for the further continuance of the business as heretofore, which, however, he did not do, nor were there any more checks paid by the bank; one or two were drawn by myself, but payment was refused. A day or two after the above transactions I was incidentally at the bank to consult with Mr. Page on some matters pertaining to the cotton business, as I was accustomed to do in Mr. Parkman's absence, when Mr. Page asked me to sign the names of Parkman & Co., and Parkman, Brooks & Co., in a signature book. I asked him why he wanted me to do so. He replied, "only as a matter of form, as you have used these signatures," and opening the book he desired me to sign Parkman & Co. in a line left unfilled, with other signatures above and below it, and also desired me to sign Parkman, Brooks & Co. in another place on a line also left unfilled, with signatures also above and below it, and then signed the above signatures in the book as he requested me to do.

By counsel for Mr. Carlton:

Question. State whether, from your knowledge of these transactions and of facts, you have any reason to suppose that Mr. Carlton was any way benefited or had any interest in the business transactions between the parties or in their cotton operations.

Answer. I had not—never dreamed of such a thing. Nothing transpired from or between any of the parties, or from any transaction that ever came to my knowledge, that led me to think any such thing.

P. P. LEARNED.

Subscribed and sworn before me August 14, 1865.

H. A. RISLEY,
Supervising Special Agent.

Deposition of Edward Parkman.

Edward Parkman having been duly sworn that the evidence given by him on the investigation pending before me on behalf of the government shall be the truth, the whole truth, and nothing but the truth, deposes and says :

By counsel for the government:

Question. Had George N. Carlton any interest in the cotton operations of the firms with which you are connected, or either of them, or in your cotton operations, or was he ever paid by you one dollar, or did he receive any benefit or advantage growing out of your cotton operations, or Page's subscriptions to the 7-30 loan?

Answer. None whatever. He never received one dollar, or any benefit growing out of the 7-30 loan. After obtaining permits from the government, I once said to Mr. Carlton, "We are going into large operations, and hope to make a good deal of money. I want you to facilitate our business all you can consistent with your duty to the government, and, if we are successful, I expect to make you a handsome present. Give us all information you can, and early as possible, of changes in the treasury regulations, and assist us, as you probably can. This is all I ask of you." This is the only conversation I ever had with him on the subject.

Question. State whether Mr. Larned was authorized to sign the firm's name of Parkman, Brooks & Co. to the three several checks of that firm, received by Carlton and Mr. Page, amounting in the aggregate to \$556,945.

Answer. He had no such authority, and we repudiated the transaction when it came to our knowledge.

Question. Had you ever any arrangement with Mr. Carlton or Mr. Page or the Commercial Bank by which any deposit made, or to be made, in the Commercial Bank by George N. Carlton should stand as security for any checks or drafts which Parkman, Brooks & Co., or Parkman & Co., had made, or should make, on the Commercial Bank of Tennessee?

Answer. I had no such arrangement with any of the parties. Mr. Page came to me in January, 1864, I think, and stated that his bank was short of funds; that Carlton was depositing moneys with other banks in the city, which might be deposited with him as well as other banks, and asked me if I could not induce him to make some deposits in his bank. I told him I would try. I did speak to Carlton, and he said he would deposit with him up to \$100,000, but the deposit was to be made for the accommodation of the bank, and not of Parkman, Brooks & Co., and Carlton was to draw it out whenever drafts came upon him from the Treasurer.

Question. Were you at Memphis at the time of the exchange of checks, by which Carlton received the checks of Parkman, Brooks & Co. for those of Mr. Page for \$556,945, and when did you first know of the transaction?

Answer. I was not in Memphis at that time. I left on the 10th of January, 1865, for the Red river and Washita, and remained absent in that country attending to our business there until about the 1st of June, when I returned to Memphis, and then, for the first time, learned of the transaction between Page and Carlton, which has been under your investigation, and Mr. Brooks and myself immediately sent a written notice upon Mr. Carlton, Mr. Page, and the Commercial Bank, repudiating and protesting against the transaction.

EDWARD PARKMAN.

Subscribed and sworn before me August 15, 1865.

H. A. RISLEY,
Supervising Special Agent.

Deposition of Frank W. Brooks.

F. W. Brooks, being duly sworn that the evidence he shall give on the investigation pending before me on behalf of the United States shall be the truth, the whole truth, and nothing but the truth, deposes and says :

By counsel for the government :

Question. Had George N. Carlton any interest in the cotton operations of Parkman, Brooks & Co., or in your cotton operations, or was he paid one dollar, or did he ever receive any benefit or advantage growing out of your cotton operations, or Page's subscriptions to the 7-30 loan ?

Answer. None whatever. Nothing was ever paid him, and he derived no benefit or advantage whatever, growing out of our cotton operations, or Page's subscription to the 7-30 loan.

Question. Was Mr. Learned authorized by you, or any one of your firm, to your knowledge, to sign the name of Parkman, Brooks & Co. to these several checks, amounting in the aggregate to \$556,945, given to Carlton by J. W. Page, jr., in exchange for his checks ?

Answer. He had no such authority from me or any member of the firm, to my knowledge. When the transaction first came to my knowledge it was repudiated. Mr. Parkman and myself entered a written protest against it and served on Mr. Carlton, Mr. Page, and the Commercial Bank.

Question. Had you any personal knowledge of the transactions between Mr. Carlton and Mr. Page for raising money through sale of government bonds ?

Answer. None whatever.

Question. Were you in Memphis or absent at the time, in April last, of the exchange of checks between Mr. Page and Mr. Carlton, by which Carlton received the checks of Parkman, Brooks & Co. for those of Mr. Page, and when did you first know of the transaction ?

Answer. I was absent from Memphis on the Yazoo river at the time of the transaction referred to. I do not now remember the exact time when I first learned of it. It was when Parkman and I came up on the Zephyr, and about a week before the date of a written protest made by us and served on all the parties. I first gave verbal notice to Mr. Carlton and Mr. Page and the Commercial Bank that Parkman, Brooks & Co. repudiated the whole transaction, and a few days afterwards we made and served the written protest.

FRANK W. BROOKS.

Subscribed and sworn before me August 14, 1865.

H. A. RISLEY,
Supervising Special Agent.

MEMPHIS, August 12, 1865.

After full and satisfactory investigation Mr. E. Parkman is fully released and honorably discharged from all liability incurred, or supposed to have existed to the United States, arising out of the business or affairs of the custom-house or of the United States depositary at this place. It appears that Mr. Parkman was absent at the time of the transactions which have undergone examination, and, together with Mr. Brooks, entered a written protest against them immediately on their return, and nothing appears involving Mr. Parkman's reputation, or to impair confidence in his integrity.

H. A. RISLEY,
Supervising Special Agent.
C. TUCKER,
Counsel.

E.

Report of H. A. Risley, supervising special agent of the treasury, July 19, 1866, in the matter of the defalcation of George N. Carlton, late special agent and surveyor of customs, &c., at Memphis, Tennessee.

TREASURY DEPARTMENT, July 17, 1866.

SIR: In obedience to your direction, I have prepared and have the honor to submit a full statement in relation to the transactions of George N. Carlton, late special agent and surveyor of customs at Memphis, Tennessee, and a designated depository of public moneys.

Mr. Carlton received his appointment and designation from Mr. Secretary Chase, September 25, 1863. By the regulations concerning commercial intercourse in States declared in insurrection, he was authorized to grant permits for transportation of merchandise to, and of products from, places in such States within the national military lines, and to collect fees and percentages on the value of merchandise and products transported; and there being no reliable bank in or near Memphis, he was made a depository of public moneys—the practice having been, about that time, adopted of designating like officers located on frontier lines in or near the insurrectionary States as such depositaries.

To secure the faithful performance of his official duties, Mr. Carlton executed, with approved sureties, three several bonds, which are on file in the department and in force, viz:

1. Bond dated October 16, 1863, as designated depository, Alfred T. Lacy and John Lonsdale as sureties, in the penalty of \$50,000.

2. Bond dated October 17, 1863, as special agent and acting surveyor of customs, Augustus P. Burdett and Burnett Graham as sureties, penalty \$20,000.

3. Additional bond, dated April 12, 1864, Edward Parkman and John W. Page, jr., as sureties, penalty \$100,000.

A large trade was carried on at Memphis during the war under the regulations. Large sums of money were received by Mr. Carlton, and faithfully accounted for, and up to July of last year there was no intimation or suspicion that there was anything wrong in his official transactions.

The negotiation of the seven-thirty (7-30) loan had been committed to Jay Cooke, esq., and public depositaries were authorized to receive subscriptions. The manner of subscriptions at distant points was this: A person wishing to subscribe deposited his money with the public depository, received from him a certificate stating the deposit to the credit of the United States Treasurer on account of three-year seven-thirty treasury notes, &c. A duplicate of the certificate was sent to Jay Cooke & Co., and the bonds forwarded, the certificate of the depository being a voucher for Jay Cooke & Co. in their accounting with the Treasurer.

The depository made stated returns of deposits made with him, and the Treasurer, from time to time, drew drafts on him either for disbursement or for transfer of funds to some other place.

On the 26th of June, 1865, the Treasurer drew a draft on Mr. Carlton, in favor of a paymaster, for disbursement in that section, for \$295,000. The paymaster wanted to disburse the money in St. Louis, and obtained it of the assistant treasurer there, who never presented it to Carlton, but returned it to the Treasurer about the 7th of July, same year.

On the 12th of July the Treasurer drew a transfer draft for \$500,000 on Mr. Carlton, in favor of Adams Express Company, for transportation, which was returned unpaid.

A second transfer draft for \$400,000, drawn July 17, 1865, on Carlton, in favor of Adams Express Company, for transportation, also came back unpaid.

A consultation was immediately had between the Secretary and Treasurer, and Mr. Carlton's accounts were examined.

It was ascertained that he had left Memphis and was on his way to Washington for the alleged purpose of explaining the non-payment of the drafts and accounting for the money in his hands.

It was also ascertained that about \$200,000 of the proceeds of sale of bonds last subscribed for through Carlton was under control of one John Ainslee, in New York, an agent in some way for Carlton or the Commercial Bank at Memphis; and that about \$50,000 of the bonds had not been delivered by Jay Cooke & Co.; and also that the Commercial Bank of Memphis had a credit for some \$60,000 with the Chemical Bank, New York, supposed to be a part of the proceeds of the bonds.

Measures were immediately taken to arrest the further delivery of bonds by Jay Cooke & Co. which had been subscribed for through Carlton, and the \$50,000 remaining with them were saved. The payment to Carlton or the Commercial Bank of Memphis of the \$200,000 in the hands of Ainslee, was enjoined and that sum was recovered. The \$60,000 credit in favor of the Commercial Bank with the Chemical Bank of New York was also enjoined until further examination. Direction was sent by telegraph to Carlton's cashier, at Memphis, to hold all the government money under his control subject to the order of the Treasurer. An experienced agent of the treasury, Mr. H. G. Root, was sent to Memphis to take charge of the office of Mr. Carlton, and take such action in the premises as appeared necessary to protect the interests of the government.

Mr. Carlton being understood to be either in New York or on his way to Washington, an agent was sent to find him in order to guard against any possible intention of his not to come to Washington as proposed. The agent came to Washington on the evening of July 25, Mr. Carlton arriving voluntarily on the same evening, and the next morning, in company with the agent of the department, came to the treasury, where he confessed to the Secretary that a large deficit existed in his accounts, and made the explanation which appears in detail in his examination at Memphis, which accompanies this statement. The Secretary directed an examination of his baggage and person to ascertain whether money or securities were concealed. Carlton willingly exhibited everything in his trunk and about his person; handed over \$48,000 in currency, which he had received in New York on his way, on account of the 7-30 notes, and avowed a wish to do all in his power to make good his deficits.

By your direction I proceeded to Memphis with Mr. Carlton to recover any proceeds of the 7-30 notes that could be secured, and make thorough investigation into Carlton's transactions, with instructions to employ counsel, institute legal proceedings, and do all that could be done to secure the interests of the government.

The result of my investigations will fully appear in the examination had before me of Mr. Carlton and parties supposed to be implicated with him and witnesses at Memphis, a printed copy of which is herewith transmitted.

There was received at the time of money and United States securities.....	\$575,868 80
Amount received of Carlton before leaving for Memphis.....	48,000 00
United States 7-30 bonds received from Jay Cooke & Co.....	50,000 00
	673,868 80

There was also received on settlement with J. W. Page, jr., and the Commercial Bank, the obligation of J. W. Page, jr., and sureties believed to be responsible, payable in one and two years \$75,000 00

There was also received on settlement with Parkman, Brooks & Co. several promissory notes executed by them, payable in four, five, and six months, secured by mortgage, or supposed to be secured by mortgage, deed of trust, pledge of interest in steamboats and cotton, and by agreement with Brooks, for collection of captured and abandoned cotton (on which \$24,315 75 have been realized).....	201,003 12
Mr. Carlton is still indebted to the government on account as designated depository of public moneys.....	256,969 04
On account of internal and coastwise commercial intercourse....	343,330 34
	600,299 38
Against which the government hold the official bonds, executed by Carlton and sureties, the bond of Page, and the notes and securities mentioned of Parkman, Brooks & Co.....	421,687 37
Balance for which no security is held.....	178,612 01

Investigations and measures are in progress for enforcing the official bonds of Mr. Carlton, \$24,315 75 have been realized on Parkman, Brooks & Co.'s notes, and it is expected other sums will soon be realized from them. The first payment on the bond of Page and others falls due in August next, and from the known responsibility of the parties it is expected it will be promptly met, and I am unable to see how more could have been or can now be done to secure the interests of the government.

Criminal or other legal proceedings at Memphis at the time the deficit was discovered were impracticable on account of the absence of judicial officers and courts. It appeared from the investigations that the losses grew out of subscriptions to the 7-30 loan made by J. W. Page, jr., of Memphis, the president, principal proprietor and financial manager of the Commercial Bank, a man of credit and supposed large means, who induced Mr. Carlton to receive his individual checks on the Commercial Bank in lieu of money on subscriptions for 7-30 bonds, on his promise that the check should be provided for to meet the Treasurer's drafts on the depository.

Page first subscribed for \$50,000, giving his check for the amount, and promptly paid it when advised of the Treasurer's draft; then he subscribed for another \$50,000, and gave check in like manner, which was also promptly paid; and a third \$50,000 subscription was made in like manner, and a check given and paid. Then came a \$100,000 subscription, and a check given as before. Page did not provide promptly for this check as before, but wanted delay, and finally proposed another subscription to be paid in his check as before; bonds to be obtained and sold and the proceeds to be applied in payment of the preceding check. Carlton weakly consented. He was then in Page's power, and Page dictated further like subscriptions, under representations that he would, by this means, be able to overcome embarrassments, until the checks given and remaining unpaid, April 13, 1865, amounted to \$556,945.

Page's next device was to induce Carlton to surrender to him his (Page's) checks, and receive, in lieu of them, the checks of Parkman, Brooks & Co., a trading firm at Memphis, engaged largely in cotton speculations, of which firm Carlton alleges that he supposed Page was a member. Carlton made the exchange under the belief, as he alleges, that he was increasing the security of the government; that the checks of Parkman, Brooks & Co. were better than those of Page. Parkman and Brooks were at the time both in the Red river country. A Mr. Larned acted for them, and was authorized to draw checks in

the firm name in the ordinary course of business. The checks received by Carlton were executed by him on behalf of the firm, as he says by Page's direction, who he supposed to be a member of the firm. On the return of Parkman and Brooks they repudiated the checks and served notice on Carlton and Page that the checks were unauthorized and would not be recognized by them.

This was the state of affairs when the deficiency was discovered. Page had practiced a fraud by which he had made himself liable for the amount involved, and also to a criminal prosecution. His subscriptions to the loan had been made in the name of the Commercial Bank, which had received the proceeds when the bonds were sold, and although ostensibly they were paid for by Page's individual check, the bank, having received the avails through its principal financial officer, was chargeable with knowledge of all the circumstances, and was undoubtedly liable for the amount. But such liability would be stoutly contested by the bank, which was found to be insolvent independently of this government liability. All its effects would depreciate and disappear in case of litigation, and its credit be destroyed. Page, although an enterprising man of reputed wealth previous to that time, had sustained losses and was wholly unable to respond in any large sum. There were no courts in Tennessee, and the only United States judge was absent from the State for the season. I became satisfied, and the counsel I employed became convinced it would be for the interest of the government to accept the \$75,000 proposed to be secured by Page, and release him and the bank from pecuniary liability. Carlton had nothing; Parkman, Brooks & Co. were insolvent, having then recently met heavy losses in cotton operations. They repudiated the checks, and it was not clear that any liability could be established against them. They acknowledged themselves indebted to the Commercial Bank, and were willing to assume and secure as best they could \$201,003 12, on being discharged by the bank, and the arrangement was made and notes and securities received of them as stated. If any better arrangement can be obtained, or any better terms in any way enforced, the government is not concluded, but at liberty to do whatever may be deemed best.

To secure the ends of public justice, criminal proceedings may, and perhaps should, be prosecuted, and the guilty parties brought to punishment.

In the hope of securing all that could be secured in the way of pecuniary returns, and in view of the disorganized state of judicial affairs at Memphis, no such proceeding has yet been prosecuted. From force of circumstances, and with the hope of advantage, a lenient policy has so far been pursued by agents intrusted with the oversight of the matter. I believe, on full investigation, it will be found that the government interest in the premises has been carefully considered and vigilantly guarded, and that the loss, greatly exaggerated as it is in the published accounts, but considerable in itself, has been one of the unavoidable incidents of the late public disorders.

Very respectfully, your obedient servant,

H. A. RISLEY,
Supervising Special Agent, &c.

Hon. H. McCULLOCH,
Secretary of the Treasury.

F.

WASHINGTON CITY, D. C., July 24, 1866.

GENTLEMEN: Through the papers I learned, some weeks since, on motion of E. B. Washburne, of Illinois, the evidence taken at Memphis, Tennessee, in August, 1865, by the government, in relation to the deficits in the accounts of the government agent at that place, was referred to you as the "Committee on-

Banking and Currency," with full power and authority to send for witnesses, books, and papers, to examine and investigate the same, and report your action to Congress. In view of the resolution above referred to I have remained in Washington constantly, and through our representative, Hon. J. W. Leftwich, advised members of your committee of my presence, earnestly desiring and daily expecting to be summoned before you touching the matters involved, and for information in regard to witnesses and papers, without which an impartial report must be incomplete. The statements made recently in a number of our daily journals I have passed in silence, believing that when you should investigate the subject a full, fair, impartial examination would be accorded.

I ask, gentlemen, no favor at your hands. Your investigation is an inquest upon my character. In your decision and report is involved my honor as a man, and position as a gentleman.

All I request is an opportunity to refute charges as false as malicious, the privilege of rebutting the *ex parte* statements of, as I am credibly informed, suborned witnesses, whose affidavits, recently taken without notice to ourselves, have been imposed upon you, and upon which you are called to pass sentence exonerating from blame or reflecting upon gentlemen whose characters for honor and integrity have heretofore been unimpeachable and above reproach.

The case once investigated, I have the honor to submit the following, a copy of letter of the government officers intrusted with the investigation, exonerating me from all blame or association, directly or indirectly, therewith :

" MEMPHIS, August 12, 1865.

" SIR: In answer to your note of this morning, I take pleasure in saying that nothing has appeared in the investigation into the custom-house affairs here in the slightest degree prejudicial to your character, or in any manner involving your personal reputation. There is no pretence anywhere that there has been any impropriety in your transactions, and nothing has transpired to impair confidence in your integrity in your business relations with the department.

" Very respectfully,

" H. A. RISLEY,

"*Sup. Special Agent Treasury Department.*

" F. W. BROOKS, Esq."

That there are parties connected with this matter not blameless is doubtless true. That their efforts to shield themselves will be as strong as unscrupulous is equally certain.

Let persons, books, and papers be sent for. Institute a most thorough and searching investigation. Inflict the severest penalty known to the law upon the guilty. I have nothing to conceal. I challenge a most rigid investigation ; but in the name of justice and right I again ask to be heard, and that you will not heap opprobrium upon names as blameless as your own by a hurried examination and partial report.

Your commands will reach me at Willard's hotel.

Very respectfully,

F. W. BROOKS.

Hon. T. M. POMEROY,
SAMUEL HOOPER,
CHAS. V. CULVER,
R. P. BUCKLAND,
A. HARDING,
JNO. LYNCH,
JOS. H. DEFREES,
C. D. HUBBARD,
SAMUEL J. RANDALL,

House Committee on Banking and Currency.

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ASSASSINATION OF LINCOLN.

JULY —, 1866.—Ordered to be printed.

Mr. BOUTWELL, from the Committee on the Assassination of Lincoln, made the following

REPORT:

The Committee on the Judiciary, to whom were referred the resolutions of the House of Representatives of April 9 and April 30, 1866, instructing the committee to inquire into the nature of the evidence implicating Jefferson Davis and others in the assassination of President Lincoln; and also whether any legislation is necessary in order to bring such persons to a speedy and impartial trial, if it should appear that there was probable cause to believe that said persons, or any of them, are guilty of inciting, concerting, or procuring the assassination of the late President of the United States; and also whether any legislation is necessary in order to bring said persons to a speedy and impartial trial for the crime of treason, have investigated the subjects as directed, and make the following preliminary report thereon:

It is notorious that said Davis was guilty of the crime of treason according to the Constitution and the laws of the United States, and the committee are of the opinion that there are no obstacles to a speedy and impartial trial which can be removed by legislation. This is also the opinion of Attorney General Speed, as given in his testimony before the Judiciary Committee.

The evidence in possession of the committee connecting Jefferson Davis with the assassination of President Lincoln justifies the committee in saying that there is probable cause to believe that he was privy to the measures which led to the commission of the deed; but the investigations which have been made by the War Department and by the committee have not resulted in placing the government in possession of all the facts in the case. It is probable, however, that the further prosecution of the investigation by the committee and by the officers of the government will result finally in a full development of the whole transaction.

The capture of the rebel archives has put the government in possession of a mass of letters, papers, and documents of various kinds, only a portion of which have as yet been examined. The examination thus far has thrown light upon the general policy of the rebel authorities, which, in many particulars, involved a total disregard of international law and of the usages of civilized war. The Secretary of War, through Francis Lieber, LL. D., chief of the archive office, has furnished to the committee copies of various letters and papers found in the war office at Richmond, bearing upon four points of the policy of the rebel government: first, with regard to negroes bearing arms; second, the condition of rebel prisons, and the treatment of prisoners; third, orders issued and letters written by the rebel secretary of war in relation to the Union prisoners; and fourth, views and suggestions of Jefferson Davis in regard to Union prisoners. Copies of these papers have been furnished to the committee, and a synopsis thereof is herewith submitted as a part of this report. While the evidence thus

furnished does not bear directly upon the question submitted to the committee, it has been thought advisable to lay it before Congress and the country as showing the brutal and inhuman policy of the men who instigated and guided the rebellion, and as being, in that particular, intimately connected with the attempts that were made to burn the cities of the north, to destroy its commerce on the rivers, lakes, and the ocean, without regard to the loss of life, and finally with the assassination of the President of the United States. In 1862 Jefferson Davis issued an order that all negro slaves captured in arms should at once be delivered over to the executive authorities of the respective States to which they belonged, to be dealt with according to the laws of such States, and that the like order be executed in all cases with respect to all commissioned officers of the United States army found serving in company with armed slaves in insurrection against the authority of the different States of the confederacy. By the statutes of South Carolina slaves or other negroes engaged in mutiny and insurrection were to be tried by two justices of the peace and three freeholders, associated together, who were empowered and authorized to inflict the punishment of death upon such offenders.

On the 13th of June, 1863, S. S. Anderson, assistant adjutant general to E. Kirby Smith, and by his direction, addressed a letter to General R. Taylor, dated at Shreveport, in which that writer says, in answer to a communication of Brigadier General Herbert, asking what disposition should be made of slaves taken in arms, that "No quarter should be shown them. If taken prisoners, however, they should be turned over to the executive authorities of the States in which they may be captured, in obedience to the proclamation of the President of the Confederate States." * * * * *

"Should negroes thus taken be executed by the military authorities capturing them, it would certainly provoke retaliation. By turning them over to the civil authorities, to be tried by the laws of the State, no exception can be taken."

On the 13th of June, 1863, E. Kirby Smith writes to R. Taylor, commanding the district of Louisiana, and says: "I have been unofficially informed that some of your troops have captured negroes in arms. I hope this may not be so, and that your subordinates who have been in command of capturing parties may have recognized the propriety of giving no quarter to armed negroes and their officers. In this way we may be relieved from a disagreeable dilemma. If they are taken, however, you will turn them over to the State authorities to be tried for crimes against the State; and you will afford such facilities in obtaining witnesses as the interests of the public service will permit."

Again: Smith, writing to General S. Cooper, adjutant and inspector general, June 16, 1863, encloses two letters addressed to General Taylor, and says: "Unfortunately such captures were made by some of Major General Taylor's subordinates."

Jefferson Davis, in his message to the rebel legislature, January 12, 1863, referring to the proclamation of emancipation of January 1, of that year, says that "by it the negroes are encouraged to general assassination of their masters by the insidious recommendation to 'abstain from violence unless in necessary self-defence.' Although our own detestation of those who have attempted the most execrable measure recorded in the history of guilty man is tempered by profound contempt for the impotent rage which it discloses, so far as regards the action of this government on such criminals as may attempt its execution, I confine myself to informing you that I shall, unless in your wisdom you deem some other course more expedient, deliver to the several State authorities all commissioned officers of the United States who may hereafter be captured by our forces in any of the States embraced in the proclamation, that they may be dealt with in accordance with the laws of those States providing for the punishment of those criminals engaged in inciting servile insurrection."

On the 1st of May, 1863, the rebel congress passed a series of resolutions

on the subject of retaliation. The fourth resolution (sec. 4) declares that "every white person, being a commissioned officer, or acting as such, who, during the present war shall command negroes or mulattoes in arms against the Confederate States * * * shall be deemed as inciting servile insurrection, and shall, if captured, be put to death or be otherwise punished at the discretion of the court." The seventh resolution of the series declares that "all negroes and mulattoes who shall be engaged in war or be taken in arms against the Confederate States, or shall give aid or comfort to the enemies of the Confederate States, shall, when captured in the Confederate States, be delivered to the authorities of the State or States in which they shall be captured, to be dealt with according to the present or future laws of such State or States."

This policy of the rebel authorities was modified in the following year. But the declarations made and the acts done in pursuance of these declarations are conclusive proofs of the brutal and malignant feelings by which the leaders of the rebellion were controlled, and rendered it not only possible but probable that they would at once engage in projects for the assassination of the chief men of the republic.

The documents found in the rebel archives at Richmond fully sustain the statements that have been made by persons in the service of the United States concerning the inhuman treatment of Union soldiers in southern prisons, and leave no doubt that Jefferson Davis and the rebel authorities had knowledge of this treatment, and that they took no effective measures in behalf of humanity. Indeed, it is more than probable, from the evidence thus disclosed, that it was part of the policy of the rebel authorities to impair the effectiveness of the Union army by systematic ill treatment and starvation of prisoners. Davis says, in his message to the rebel congress of November, 1861, after reciting what he alleges to be the atrocities of the United States forces: "If they convert their soldiers into incendiaries and robbers, and involve us in a species of war which claims non-combatants, women and children, as its victims, they must expect to be treated as outlaws and enemies of mankind. There are certain rights of humanity which are entitled to respect, even in war, and he who refuses to guard them forfeits his claim, if captured, to be considered as a prisoner of war, but must expect to be dealt with as an offender against all law, human and divine."

Again: in his message of August, 1862, he says: "No method remains for the suppression of these enormities but such retributive justice as it may be found possible to execute; retaliation in kind for many of them is impracticable;" * * "but stern, exemplary punishment can and must be meted out to the murderers and villains who, disgracing the profession of arms, seek to make of public war the occasion for the commission of the most monstrous crimes." * * "Nothing remains but to vindicate our rights and maintain our existence by employing against our foes every energy and every resource at our disposal."

Reports of the condition of the prisons of the south made by rebel officers fully sustain the declarations and threats of Davis in the extracts above quoted. In September, 1862, a report was made by a committee of the house of representatives of the rebel congress. The committee say that they "visited the hospital of the sick and wounded of our enemies now in our custody, and found all of the wards in a wretched condition. The upper ward was such as to drive the committee out of it almost instantly. The honor of our country will not permit us to bring the matter to the attention of Congress, thereby making the matter public."

Accompanying the report was a resolution by which the chairman of the committee was instructed to address a letter to the secretary of war in relation to the condition of prisoners confined in the hospitals at Richmond, above referred to, and urging him to have the same placed in a more comfortable condition as soon as possible.

In May, 1863, a committee of the rebel house of representatives was appointed to examine into the condition of the prisoners confined in Castle Thunder prison. Reports were made by the majority and minority of the committee, and they agreed in condemning the management at the prison. In the minority report it is stated that the acts committed and complained of most were the killing of two prisoners, the shooting of a third, and the infliction of corporeal punishment by whipping on the bare back, [in accordance with instructions from General Winder, but unsupported by law,] and confining prisoners in the prison yard, exposed to the weather. The minority say, further, that they think the infliction of corporeal punishment administered by Captain Alexander was illegal and improper; that the punishing by exposing prisoners to the weather was improper and unwarranted, and that the order to shoot at those who came to the windows was unjustifiable; but inasmuch as it is not known that any serious consequences resulted from those acts, and inasmuch as they appear to have been resorted to by Captain Alexander, not from any wantonness or cruelty, but from a desire to maintain proper discipline, and perhaps from an erroneous conception of his rights and powers as keeper of such a prison, it is recommended that no further action be taken by the house.

The majority report and minority report above referred to concur in the exculpation of the officers of the prison. A second minority report, which appears to have been made by a Mr. Herbert, says that he is of the opinion that "Brigadier General Winder and Captain Alexander, who have had superintendence of Castle Thunder, have shown a want of judgment and humanity in the management of that prison, deserving not only the censure of congress, but prompt removal from the position they have abused." Winder was still retained in charge of the prison as late as January, 1864. One T. O. Stevens writes to Jefferson Davis, and asks for the removal of General Winder. He states that Winder is universally disliked, and by many detested. In this letter various charges of a personal nature are made against Winder.

About this time Henry Brown, post chaplain of Camp Lee, writes to the secretary of war, and calls attention to the fact that "the Yankee deserters confined in Castle Thunder will freeze unless something is speedily done." This letter is referred to the provost marshal, who admits that the complaints are well founded; that he has forwarded repeatedly complaints of a similar character, and that no remedy has been furnished. He says: "I do not doubt that there has been considerable loss of life already at the Libby and Castle Thunder from this cause. The fault is with those officers whose duty it was to furnish a supply of fuel and who have not made proper provision."

The report from the inspector of prisons at Cahaba, Alabama, in the autumn of 1864, shows that the food issued to the prisoners was poor in quality and insufficient in quantity. A similar report made by R. S. Whitfield, surgeon in charge of the prison at Cahaba, dated March 31, 1864, states that the sleeping arrangements consist of rough bunks but recently constructed, accommodating but 432, so that 228 are forced to sleep upon the ground, with but one fireplace in the building. All the fires, about forty in number, have been until the past few days built at intervals upon the floor. In September, 1864, R. H. Chilton writes a letter to John H. Winder, dated Andersonville, Georgia, in which he gives certain extracts from the reports of military prisons at Andersonville, Georgia. The report says: "There is no medical attendance furnished within the stockade. Small quantities of medicines are placed in the hands of certain prisoners of each squad or division, and the sick are directed to be brought out by the sergeants of squads daily at sick-call to the medical officers who attend at the gates. The crowd at these times is so great that only the strongest could get access to the doctors; the weaker ones being unable to force their way through the press, and the hospital accommodations are so limited that, though

the beds (so called) have all, or nearly all, two occupants each, large numbers who would otherwise be received are necessarily sent back to the stockade. Many (twenty yesterday) are carted out daily who have died from unknown causes, and whom the medical officers had never seen. The sanitary condition of the prisons is as wretched as can be, the principal causes of mortality being scurvy and chronic diarrhœa. * * * Raw rations have to be issued to a very large proportion, who are entirely unprovided with proper utensils, and furnished so limited a supply of fuel, they are compelled to dig with their hands in the filthy marsh before mentioned for roots, &c. * * * After inquiry, I am confident that by slight exertion green corn and other anti-scorbutics could readily be obtained."

Surgeon Isaiah H. White says, in a report made, as we suppose, in November, 1864, that, "a large excess of funds at Andersonville will be turned over to the treasurer, because the commissary at that post has failed to supply himself with funds to meet requisitions, while thousands of sick, both at this post and Andersonville, are in a state of suffering that would touch the heart of the most callous."

From the indorsements on this report it appears to have been referred by the surgeon general to the secretary of war; by the secretary of war to the commissary general; by the commissary general to the quartermaster general, with the indorsement that the commissary general had furnished to the use of the hospitals all the money that could be obtained for that purpose. The quartermaster general returned the report to the secretary of war, with the declaration that the means at the disposal of his bureau had always been liberally supplied to the military prisons. By the order of the secretary of war the report appears to have been filed without anything being accomplished for the relief of the prisoners.

As late as January, 1865, a report was made by Colonel H. Forno to General Winder, with reference to the military prisons of South Carolina. In this report it is stated that "the subsistence department is entirely deficient, and the ration issued daily amounts almost to starvation. There have been but two issues of meat in the last two months, and scarcely any sirup." This report was referred to the adjutant and inspector general; then to the commissary department; then returned to the inspector general; then referred to the secretary of war, and by him referred to the secretary of the treasury, who returned it to the secretary of war, and then, by order of the assistant secretary of war, the paper was filed without any action being taken for the relief of the prisoners.

On the 12th of October, 1864, one Sabina Dismukes writes to Jefferson Davis from Stateburg, South Carolina, and encloses an article from the Sumter Watchman which contained an account of the sufferings of prisoners at Florence.

In her letter this woman says, "If such things are allowed to continue, they will most surely draw down some awful judgment upon our country. It is a most horrible national sin that cannot go unpunished. If we cannot give them food and shelter, for God's sake send them back to Yankee land, but don't starve the miserable creatures to death."

The article from the Watchman is incorporated into this report, and it is herewith submitted to the House. It appears to be a truthful account of the condition of many thousands of our Union soldiers, and it cannot be read without the deepest emotion, nor without the conviction that the horrors of that prison far surpassed all the doings of the most savage races in the most barbarous ages of the world. This communication was referred by Davis to the secretary of war, by him to the adjutant general, who referred it to General Winder, who returned it to the adjutant general with this indorsement: "The prisons in South Carolina are not under my command. I can give no information, nor can I express an opinion." The secretary of war then referred it to General Gardiner, who referred it to Colonel Harrison, the commandant of the prison at Florence, who referred it to Lieutenant Colonel Iver-

son, who, on the 17th of December, 1864, makes a report thereon in the form of an indorsement.

The following is the article from the Sumter Watchman :

A.

THE PRISONERS AT FLORENCE.

MR. EDITOR : It may not be uninteresting to your numerous readers to hear something from the Yankee camp at Florence. Your correspondent went over, upon the summons of one of those ominous O. B.'s, which the times have made more familiar than agreeable, to take a drove of cattle to the camp. Our party had in charge animals of all sizes, sexes, and conditions, from the patriarch of the herd, whose seamed and wrinkled front bore the marks of many a bloody battle, to "old crumpie," who had served her day at the milk pail, and whose constitution was evidently unable to stand the blasts of another March. We lost three on the way ; two straggled and one fell from exhaustion. The buzzards, after all, were not cheated of their long-expected prey. The country through which we travelled is "flat, stale, and unprofitable." The crops are poor, and every cotton field destroyed by the "army worm," as if in imitation of its more intelligent namesake. No object of curiosity was encountered on the way, unless we take into account the "long bridge" over what the natives call "Spawa swamp." Most of the houses were uninhabited, with fences and outbuildings going to ruin.

"No product now the barren fields afford,
But men and steel, the soldier and the sword."

THE CAMP

we found full of what were once human beings, but who would scarcely now be recognized as such. In an old field, with no enclosure but the living wall of sentinels who guard them night and day, are several thousand filthy, diseased, famished men, with no hope of relief except by death. A few dirty rags stretched on poles give some of them a poor protection from the hot sun and heavy dews. All were in rags and barefoot, and crawling with vermin. As we passed around the line of guards I saw one of them brought out from his miserable booth by two of his companions and laid upon the ground to die. He was nearly naked. His companions pulled his cap over his face and straightened out his limbs. Before they turned to leave him he was dead. A slight movement of the limbs, and all was over—the captive was free ! The commissary's tent was near one side of the square, and near it the beef was laid upon boards preparatory to its distribution. This sight seemed to excite the prisoners, as the smell of blood does the beasts of the menagerie. They surged up as near the lines as they were allowed, and seemed, in their eagerness, about to break over. While we were on the ground a heavy rain came up, and they seemed greatly to enjoy it, coming out *a puris naturalibus*, opening their mouths to catch the drops, while one would wash off another with his hands, and then receive from him the like kind office. Numbers get out at night and wander to the neighboring houses in quest of food.

From the camp of the living we passed to the camp of the dead—the hospital ; a transition which reminded me of Satan's soliloquy—

"Which way I fly is hell ; myself am hell.
And in the lowest deeps, a lower deep,
Still threatening to devour me, opens wide."

A few tents, covered with pine tops, were crowded with the dying and the dead in every stage of corruption. Some lay in prostrate helplessness ; some had crowded under the shelter of the bushes ; some were rubbing their skeleton

limbs. Twenty or thirty of them die daily; most of these, as I was informed, of the scurvy. The corpses lay by the roadside waiting for the dead cart, their glassy eyes turned to heaven, the flies swarming in their mouths, their big toes tied together with a cotton string, and their skeleton arms folded on their breasts. You would hardly know them to be men, so sadly do hunger, disease, and wretchedness change "the human face divine." Presently came the carts; they were carried a little distance to trenches dug for the purpose, and tumbled in like so many dogs; a few pine tops were thrown upon the bodies, a few shovels-full of dirt, and then haste was made to open a new ditch for other victims. The burying party were Yankees, detailed for the work; an appointment which, as the sergeant told me, they consider a favor, for they get a little more to eat and enjoy fresh air.

Thus we see at one glance the three great scourges of mankind—war, famine, and pestilence; and we turn from the spectacle sick at heart as we remember that some of our loved ones may be undergoing a similar misery.

"Man's inhumanity to man makes countless millions mourn."

Soon 8,000 more will be added to their number, and where the provisions are to come from to feed this multitude is a difficult problem. Five thousand pounds of bacon or ten thousand pounds of beef daily seems, in addition to more urgent draughts upon her, far beyond the ability of South Carolina.

The question is, are we not doing serious injury to our cause in keeping these prisoners to divide with us our scanty rations? Would it not be better at once to release them on parole?

HOWARD.

D. 1328.]

HEADQUARTERS FLORENCE MILITARY PRISON,

December 17, 1864.

Respectfully returned. Howard visited Florence, when necessity forced the removal of prisoners here without any preparation whatever being made for their proper care or subsistence. In my opinion, if one of those ominous O. B.'s was sent him to report to the front, there would be no danger of his exciting the nerves of ladies, and it might, perhaps, do the service some good. Mrs. Dismukes may rest easy and quiet in reference to the treatment of prisoners at this prison, for, since I assumed command, (the 10th October, 1864,) the deaths have decreased, from thirty-five to forty per day, to one single demise, which my hospital and sexton's report shows, for the last twenty-four hours. I call attention to the fact that the prisoners were all brought here from other prisons, and solicit inquiry as to their improvement or still further degradation, and challenge any prison in the confederacy, taking everything in consideration, for health, cleanliness, neat-looking prisoners, neat-burial grounds, &c. They are given everything the government issues to them.

I am, very respectfully, your obedient servant,

JOHN F. IVERSON,

Lieutenant Colonel Commanding.

[Received Florence military prison December 17, 1864.]

On the 18th of February, 1865, Bradley T. Johnson asks General Gardiner to remove Captain J. M. Goodman from the office of post quartermaster at Salisbury prison for inefficiency. In that letter he says: "The only hospitals are buildings within the prison enclosure, where the only amelioration we can give to their sufferings are pine bunks and straw to lie on; without them they lie on the bare floor or earth with little or no covering." On the 1st of February Doctor Wilson, surgeon of the prison, made a requisition for 10,000 pounds of straw,

and also 100 bunks. Up to the 13th of February, he had received 800 pounds of straw and no bunks. The sick, therefore, lay on the bare ground, and from the 1st to the 31st of January 732 of them died. From February 1 to February 13, 275 died. He says, further in this letter: "This country abounds in straw. For a country as full of wood as this, energy and methodized industry would have formed a depot to provide for such contingencies as a temporary failure of supplies." In the early part of 1865 Governor Vance, of North Carolina, wrote to the rebel secretary of war, and states that the prisoners at Salisbury are suffering terribly. A report made by Captain Hall says: "The ground upon which the prison is situated is red clay, and in time of rain this clay held the water and made the prison a perfect bog for a long time afterwards. There was no drainage to the place, and the pools of filthy water would, he feared, be certain to create a pestilence in warm weather. There was no stream running through the place." According to the same report the number of prisoners confined at Salisbury in the month of October, 1864, was 10,321, and of this number 3,419 had died previous to February 17, 1865.

The foregoing extracts present a small portion only of the evidence contained in the letters and documents found in the rebel archives concerning the condition and treatment of Union soldiers in the prisons of the south. It is true, that various excuses were made from time to time for these outrages upon humanity and the rules of war by those in authority at Richmond—such as the refusal of the United States government to exchange prisoners and their own inability to furnish supplies. But the fact still remains, that from the year 1862 to the close of the rebellion, the authorities were fully and frequently informed, as well by letters and communications from private persons as by official reports, that the prisoners in their custody were suffering every conceivable horror, and dying in great numbers daily, in consequence of the treatment they endured at the hands of the subordinates of the Richmond government. And it also remains a well-established fact that no really efficient effort ever was made at any time to remove or diminish the evil.

The remaining testimony to be examined and considered relates to the complicity of Jacob Thompson, C. C. Clay, jr., and Jefferson Davis, in the assassination of President Lincoln. In a letter written by C. C. Clay, jr., to President Johnson, dated Fortress Monroe, November 23, 1865, he says:

"Had your proclamation charged me with the very act of Booth, I should not have been more surprised and amazed than I was at being charged with concerting the crime. I had been absent from Canada nearly six months, had never known or heard of Booth, or either of those charged as his immediate accomplices, and had not, to my knowledge or belief, ever seen him, or either of them."

This letter to the President was written for the purpose of obtaining a release from confinement, and contains a positive denial of all complicity in the assassination of President Lincoln. One of the reasons stated by the writer in his behalf is, that he had been absent from Canada nearly six months. If this statement were true, it would not tend, in any considerable degree, to exculpate Clay, if there were evidence tending to implicate him in the assassination. But its falsity goes far to show that he had some reason for attempting to conceal the fact as to the time when he left Canada; and inasmuch as the statement was made in order to relieve himself from the charge contained in the President's proclamation, it has a strong tendency to convict him of complicity in the deed.

A letter dated "Montreal, December 10, 1864," addressed to J. Thompson, and signed "T. E. Hope," is in the handwriting of C. C. Clay. This is apparent from a comparison of the letter with Clay's handwriting, and is also established by the testimony of Major Richard Montgomery. This letter is referred to in the synopsis of the Clay correspondence, and is marked LIII

The Richmond Enquirer, of December 15, 1864, contained a "personal" copied from the New York News, of December 1, as follows:

"November 20, 1864.—H. L. Clay, Richmond, Virginia: Yours and B.'s received. Will try to leave, as suggested, by 1st December, and may go to Mexico. Am very well. Rob. and wife with me. He improving. T. E. Lacy."

The names "T. E. Hope" and "T. E. Lacy" were the assumed names of C. C. Clay, under which much of his correspondence was conducted. In an indorsement upon a letter, dated New York, January 12, 1865, without signature, addressed T. E. Hope, Clay admits it to be his assumed name. The indorsement is signed C., jr.

The fact that this "personal" was written by C. C. Clay is established by a letter from H. L. Clay, brother of C. C. Clay, to the wife of the latter, dated Richmond, Virginia, December 7, 1864, in which he transmits the "personal" from New York News, dated November 20, 1864, signed "T. E. Lacy."

It is probable that Clay intended to leave Canada by the 1st of December, 1864, and it is possible that he made the attempt to run the blockade, and subsequently returned to Halifax, if not to Canada. On the 17th January, 1865, H. L. Clay wrote a letter to the wife of C. C. Clay, dated "Richmond, Virginia," in which he says:

"I have just seen General Singleton, of Illinois, here, by permission of Lincoln and Davis. He tells me that brother C. will not attempt to run the blockade at Wilmington, but will certainly go to Mexico, and thence to Texas. As a reason for that he says, besides apprehension of capture, my brother C. has been employed by a gentleman in Massachusetts (a Mr. Pierce) to look after a large (landed perhaps) interest in Texas. I tell you this to quiet your fears for his safety, and to let your patience have its perfect work."

A letter signed "Rob.," which was written to C. C. Clay by Robert Brown, his nephew, dated St. Catharines, 19th December, 1864, commences with this paragraph:

"My Dear Uncle: Your esteemed note from Quebec, 11th instant, came to me 'O. K.,' and I hasten to answer it, hoping this will reach you before you leave Halifax."

This paragraph renders it certain that Clay was at Quebec as late as the 11th of December, 1864, or within about four months preceding the assassination.

In addition to the foregoing testimony, derived from papers found in the rebel archives, there is in the War Department the affidavit of Hiram Lewis Hall, of Toronto, Canada West, who states that he has known Clement C. Clay for fifteen or twenty years; that he saw him frequently in Canada—Toronto, St. Catharines, and elsewhere, and that he met Mr. Clay at Toronto in December, 1864, shook hands with him, and bade him good-bye, as he was starting from Montreal to take ship with the intention of running the blockade, and reaching the southern States; that at that time he supposed he had gone, but that some time after New Year's, 1865, he met him again, when Mr. Clay said he had failed to run the blockade, and had returned to Canada.*

The first allusion in point of time made to the presence of Clay in the south among all the papers in possession of the government yet examined, is a letter dated at Richmond, March 8, 1865, and written by H. L. Clay to C. C. Clay, jr. This letter contains the following words:

"Your indorsement upon a letter of sister to Celeste, brought yesterday by Captain Hudson, is the only direct intelligence I've had from you since the telegram announcing your arrival at Charleston."

* George B. Hutchinson testified before the military commission that he "last saw Clement C. Clay at the Queen's hotel, Toronto, about the 12th or 13th of February." (See Pitman's Trial of the Conspirators, page 37.)

The evidence upon this branch of the subject establishes beyond reasonable doubt the fact that Clay remained in Canada into the months of January and February, 1865, and necessarily convicts him of a false statement in his communication to the President upon a point which he deemed important as exculpating himself from the charge of complicity in the assassination of President Lincoln.

The statement of Clay that he had never known any of the persons accused and convicted of participating in the assassination of President Lincoln is shown to be false by the evidence of Richard Montgomery, as reported in the testimony taken by the military commission. Montgomery says: "I have seen Lewis Payne, the prisoner at the bar, in Canada. I saw him at the falls in the summer of 1864. I saw him again and had some words with him at the Queen's hotel in Toronto. I had had an interview with Mr. Thompson, and on leaving the room I met this man Payne in the passage-way talking with Mr. Clement C. Clay. Mr. Clay stopped me and held my hand, finishing his conversation with Payne in an undertone, and when he left me for a moment he said, 'Wait for me; I will return.'" (Conspiracy Trial, page 24.)

Clay, while in Canada, acted under the following commission:

"RICHMOND, VIRGINIA, *April 27, 1864.*

"SIR: Confiding special trust in your zeal, discretion, and patriotism, I hereby direct you to proceed at once to Canada, there to carry out such instructions as you have received from me verbally, in such manner as shall seem most likely to conduce to the furtherance of the interests of the Confederate States of America which have been intrusted to you.

"Very respectfully and truly yours,

"JEFFERSON DAVIS.

"Hon. C. C. CLAY, Jr., &c., &c., &c., *Richmond, Va.*"

This commission is written upon despatch paper, and appears to be in the handwriting of Benjamin.

It is well established by letters and documents derived from rebel sources, and now in the archives of the government, that Clay, under this commission, was instrumental in organizing and executing, with more or less success, the raids upon the cities and towns along the border, the plans for the introduction of pestilence, the organization of conspiracies to liberate the prisoners confined in Camp Douglas, Chicago, to destroy our commerce on the rivers, lakes, and ocean, and finally to thwart and overthrow the government, if possible, by inciting a new rebellion in the north.

It is also ascertained that Jacob Thompson, Beverley Tucker, George N. Sanders, W. C. Cleary, Bennett H. Young, and K. J. Stewart were employed in Canada as secret agents for the confederate authorities. In June, 1864, said Young, as directed by James A. Seddon, rebel secretary of war, proceeded without delay to the British provinces, under temporary appointment in the provisional army, and reported to Thompson and Clay for instructions.

He was authorized by Seddon to collect escaped prisoners to the number of not more than twenty, and to execute such enterprises as might be indicated, implicitly obeying the instructions of Thompson and Clay. Confidential instructions were also given by Seddon in cipher, in which Young was ordered to reconnoitre the towns near the enemy's northwestern frontier, and to take the one being most exposed, and sack, burn, and destroy banks, public buildings, stores and storehouses, railroad depots, mills, factories, cars, bridges, and such houses and barns belonging to their enemies as he might think proper. He was ordered not to allow retaliation on women and children or on unarmed and defenceless citizens. And then Seddon proceeds to say: "It is but right that the people of New England, and Vermont especially, some of whose officers and

troops have been foremost in these excesses and whose people have approved of their course, should have brought home to them some of the horrors of such warfare. It is but just retribution and retaliation." He says further: "You are aware that other officers have also received authority similar to yours. Your respective commands are independent of each other." * * * * "After the duty assigned to you all at Chicago is performed you will visit Burlington and St. Albans, Vermont. Others will visit other points as instructed."

These instructions were dated August 20, 1864, and directed to Bennett H. Young at Chicago. On the 31st of the same month Young makes a report, also in cipher, from Chicago, in which he gives a muster-roll of his command, which he calls "*The 5th Confederate State Retributors.*" Upon the roll are the names of several persons who were afterwards concerned in the raid upon St. Albans. He says: "I shall, I think, after a reconnoissance, attack Burlington or St. Albans, Vermont. I cannot fully decipher my instructions of the 20th of this month." * * * "The augmentation of federal troops here and the fears of some of the so-called peace copperheads in the convention prevents the carrying out of our plans to release the prisoners in the federal bastile here."

On the 30th of November, 1864, K. J. Stewart writes from Toronto, Canada West, to Jefferson Davis, in which he says: "If Mr. B. has not as yet sent me the triplicate of check for \$20,000,000, I will thank your excellency to have the enclosed put in Rd. Enq. among the 'personals,' and also to send a courier through to me with a line to Hon. J. Thompson, stating the fact that the check was drawn and advising him to consult me in any future raids, &c. These raids, of which Mr. T. has said to me 'they have all gone wrong,' have only served to create additional espionage and vexation to our own friends, without materially crippling the enemy or hastening peace. We should *strike hard* when we do strike, or we beget hatred instead of fear." * * * "I also desire to express my conviction that *much, very much*, can be done from this side if you will give me time and money and these fruitless raids are stopped."

It is probable that Stewart was insincere in his condemnation of the raids undertaken by Thompson, for in another paper, which was sent to Davis, he says: "In order to deceive the enemy, I will send to your excellency by signal corps an occasional communication decrying these raids, &c., as I have caused already a letter to be sent to Mr. B. containing a manifesto inciting the negroes in Washington city to revolt." In the communication last referred to he says: "I propose that the men *used here* shall be formed into a partisan corps after *present service is performed*, and each one be regarded as an officer who shall have the privilege of hiring five or more servants, (colored.*)" * * * We can enlist ten men here where the enemy can enlist one. Strategy of an aggressive character can be used here to *tremendous effect*.

"If Colonel T. has already created so much alarm and annoyance (and I acknowledge it is very great and expensive) by so many failures, how much more can be done by *one great success.*"

It is probable, also, that a letter to Davis, dated Toronto, Canada West, December 12, 1864, in which he condemns the act of sending boxes of small-pox clothing to Washington, was written for the purpose of deceiving the authorities of the United States in reference to the character of the policy by which he and his associates in Canada were controlled. (The letter is, however, an admission that \$100 public money was there paid to one Hyams, shoemaker, for services rendered in conveying boxes of small-pox clothing to be sold at Washington.)

In the same letter he says: "I regard it as a kind and merciful providence that has delayed my own action by causing the check for \$20,000, sent by the signal corps, to fall into the enemy's hands, for otherwise I should have been endangered by these abortive attempts of others;" while in his letter of the

30th of November he desires to have a triplicate of the check sent and a notice published in the Richmond Enquirer, of which the following is a copy :

"The New York News will please advise Mrs. Jacobs that she is authorized to pay Mr. Richmond the amount specified by him for the benefit of my children."
"J. DAVIDS."

This notice is interpreted as a direction from Davis himself to Jacob Thompson to pay \$20,000 of secret service money in Thompson's hands to Stewart for the purpose indicated in his communication to Davis of the 30th of November. As will be seen hereafter, the secret service money was placed in the hands of Davis, and subject to his exclusive control, and applied to those purposes only that received his personal approval.

On the 25th of October, 1864, J. P. Benjamin, secretary of state, writes to J. A. Seddon, as secretary of war, asking for a pass for Chaplain S. F. Cameron, who is, as he says, "employed with Mr. Stewart on a secret service, according to an understanding with the President, and the chaplain will want to pass through our lines on his way to Canada, accompanied by two friends." It appears that the pass was given, and it establishes the fact that Stewart was the secret agent of Davis, following his directions, and that he was paid out of the secret service fund.

It appears from the records obtained from Richmond that on the 15th of February, 1864, J. P. Holcombe was commissioned by Davis as special commissioner to proceed to the British provinces, North America. He was directed to report at Halifax to the lieutenant governor. This despatch was signed by J. P. Benjamin. On the 24th of the same month Benjamin writes to Holcombe and encloses \$8,000 to accomplish the object mentioned in his letter of the 19th instant. He says, further : "As this sum is furnished by the President from the secret service fund, your accounts will not pass through the treasury, but will be settled in this department." * * * "The remaining three thousand dollars are paid in compensation of your personal services," &c. Benjamin then proceeds to say :

"For any sum that you may pay out of these five thousand dollars under circumstances or for purposes that do not permit your taking receipts, you will furnish a certificate on honor, which will be received as a sufficient voucher."

On the 14th of March, 1864, J. A. Seddon, as secretary of war, authorizes one J. C. S. Blackburn to enlist a company of men, not to exceed fifty in number, for special service on the Mississippi river. In lieu of pay or other compensation they were to receive such percentage of the value of all property of the enemy destroyed by them as might be awarded by an officer selected by the department in charge of such duty, but in no case to exceed fifty per centum of the value. When Blackburn had enlisted twenty-five men he was to receive a commission as captain in the provisional army, but without pay. Other orders of a similar character were issued to various persons. Among others, J. Y. Beall was commissioned in the special service of the rebels for the destruction of our commerce on the Chesapeake bay and the northern lakes. This Beall is the person who was afterwards executed in New York.

The following entry is in one of the books of the rebel war department, marked "Letters Received :

"Alston, Lt. W. Is a Lt.—Offers his services to rid the country of some of its deadliest enemies."

Endorsed :

"A. G. For attention. C."

This letter is hereafter referred to and quoted by the committee, in connexion with other documentary evidence, tending to show that Davis entertained propositions for the assassination of the principal officers of the United States government.

There is also a letter from R. A. Alston to the rebel secretary of war, dated "Headquarters Morgan's command, Decatur, Georgia, February 28, 1864." The writer says: "I addressed you a communication above ten days ago in regard to the matter which you were kind enough to discuss with me when I was in Richmond. I have anxiously awaited your reply, and for fear that my letter may have miscarried, I again take the liberty of calling your attention to the subject. General Morgan, with such of his men as he can get mounted, will start on an expedition in about eight days; I will accompany him, unless I hear from you in the mean time."

This communication may be from the person referred to as Lieutenant W. Alston. But in any event, both persons, if there were two, belonged to Morgan's command, and the letter of R. A. Alston is conclusive upon the point that the subject which he had discussed with Seddon when in Richmond did not relate to the business in which General Morgan was engaged with his command, as is apparent from the last sentence of R. A. Alston's letter.

The following entries are found in books containing the record of letters received in the rebel war department:

"J. Thompson, November 17, 1864, relating to physicians. (Bureau of War Proper; Index of Letters Received, No. 4, page 411.)"

In the same volume is the following entry: "Doctor J. W. Booth, November 19, 1864. Appeals. (Bureau of War Proper; Index, Letters Received, No. 4, page 43.)"

The fact that the subject of Thompson's letter was "physicians," and that Booth is styled "Doctor," renders it probable that both letters relate to the same matter. The letters themselves have not been found. A letter was found among the Clay papers, dated Toronto, September 2, 1864. The address and signature in the original have been cut out, but upon the outside is an indorsement of the word "Young's." It is in the handwriting of C. C. Clay, junior. On the outside of the first sheet the superscription "Hon. C. C. Clay, junior," has been partially erased. There cannot be much reason to doubt that the letter was written by Bennett H. Young to C. C. Clay, jr. The following is a copy of the communication:

"TORONTO, *September 2, 1864.*

"In accordance with your orders, I left St. Catharines Friday evening, August 27, for Chicago, to engage with my company in the enterprise contemplated by yourself and Colonel Thompson for the release of Camp Douglas prisoners. Upon reaching Chicago we found that already a strong guard had been collected and veteran regiments were still arriving. One regiment was placed in the enclosure with the confederates, and (16) sixteen pieces of field artillery were parked ready to open upon those defenceless men in case an attack was made. It required no great amount of perception to see that an attempt to accomplish our object would result not only in their indiscriminate slaughter, but our own certain death. Under the circumstances, Captains Hines and Castleman decided to make no effort in that direction. We quietly waited until Wednesday night, hoping something would turn up by which we could benefit our suffering comrades and enhance the glory of the confederacy. It was then determined to make an attempt upon Rock island, if the copperheads would furnish a small portion of the long-promised aid. When brought to the test, Walker, Barrett, Dodd and company could not furnish 50 (fifty) men for the purpose. Hines and Castleman then admitted the thing a failure, and gave the men choice of returning to Canada or accompanying them to "Egypt," (southern Illinois.) The men, with few exceptions, decided to return. Thinking my instructions justified me, I ordered their return to Canada for the purpose of carrying out my original mission. After acting so unselfishly in this affair, and also obeying strictly my orders from Mr. Seddon, I was somewhat surprised to

find my own name and those of my men coupled with the epithet "deserter" by the other commissioner, and that to ladies in a public hotel. Had not my conduct been justified by my instructions, certainly the choice offered by Captain Castleman would exonerate them as well as myself. I have a desire to sustain my reputation as a soldier. I was sent here to perform a mission. I yielded all to your request, and do you now deem it justice to me to return me to Richmond without even an opportunity to do that for which I was sent? This other expedition failed through no fault of mine, and all I now demand is justice and a fair trial, which has certainly been accorded to others. Since being here I have tried to do my duty, and hardly imagine you can charge me as failing to do the same. I ask nothing, nor make no demand, save that which, justice and equality accord. If money is scarce, little will suffice. I will inflict loss, and make one trip pay the expenses of the next. Colonel Thompson orders me home. I refuse, for two reasons: first, the secretary of war reserved that right, and nowhere is it delegated to Colonel Thompson alone to order me; second, before an attempt and a failure to do that for which I was sent, have I any right to forego orders from Mr. Seddon in favor of those issued by Colonel Thompson? Again demanding justice, and a regard for my own reputation,

"I remain, yours, respectfully,"

[Signature torn out in the original.]

In apparent connexion with the foregoing letter is one from Jacob Thompson, which has been largely mutilated, but states that some person has received from Jacob Thompson in gold \$93,614 between July 29 and August 23, 1864; \$10,000 of which was paid by J. P. Holcombe. Following this statement, Thompson says: "Above you will find account, as it appears on my books." He then proceeds to say:

"While I am not prepared to justify your belief that Barrett is a spy, yet I am fully satisfied the whole effort has been a miserable failure. It is too late for Singleton to say this, since he has received and not accounted for \$13,000 from this same spy. I agree with you that we have fallen into the hands of men whose performance has fallen far short of their professions and apparent expectations. I shall take steps for my departure from this city, and from Canada. On yesterday, Mr. Burley, one of the Johnson Island men, was arrested. So we shall now have that affair fully ventilated. After the miserable failure at Chicago, by discovery, and the quiescent state of the northern public mind, I have but little hope of aid to the confederacy from this quarter. I have been expecting you for some time. Enclosed you will find a letter from Mr. McGinnis, whom I advised to go to Montreal and pay into your hands the money he had obtained at St. Albans. He offered to pay me the money, and when I told him I should at once turn it over to you, and therefore he had better pay it to you at once. And this he agreed to do. I suppose I shall see him no more. He wishes a statement from me, and it is just I should detail for him our conversation.

"Yours, truly,

"J. THOMPSON."

Although this letter is mutilated, and the name of the person to whom it is addressed effaced, it is still apparent that it was written to C. C. Clay, jr. The letter itself furnishes internal evidence leading to the same conclusion.

On the 15th of November, 1864, "J. D. McInnis," who is, undoubtedly, the person referred to in Thompson's letter, without date, writes to Jacob Thompson from Montreal, and says that, "upon arriving at this place, I found that the 'raiders' had refused to give up their money to Clay, and that he had left the place in a huff." Then he says: "I wish you to give me a letter, stating the facts in the case, and that I expressed my willingness to give up the money to Mr. Clay, if it would have any favorable bearing on the case of the

prisoners. It seems extremely hard — me [torn out in the original] that the prime mover in the affair should speak so severely of those who only did his bidding, and to whom he promised a release in twenty-four hours, provided they were arrested in Canada."

This letter convicts Clay and Thompson of the crime of inciting and organizing a raid which resulted in the destruction of St. Albans.

Another letter, dated Hamilton, September 20, is believed to be in the handwriting of Bennett H. Young, and a portion of the signature remains, showing that it was signed by Young. The name of the person to whom it was written is not given. Some of the words are removed, but the meaning of the whole is very clear. The following is a copy :

"HAMILTON, *September 20.*

"I am here this morning on my way to the falls to see Higbee, Denny & Co. The river has fallen five feet three inches in the last four days, and by a week from to-day will be in a condition for us to act. I am as hopeful and confident as of yore. I found an air-gun in Toronto—shoots thirty times and will kill a man eighty yards. I had rather, though, you would send Huntley to New York. He is a splendid mechanic, and I think we can secure a better article at a cheaper rate than here.

"Higbee, myself, and one other as a messenger, will leave Thursday or Friday for the scene of our operations unless you order otherwise. We can thoroughly arrange and perfect our plans by the time the men will be there. We will send you by messenger a concise and exact statement thereof. You can prepare greenbacks for us and send them by my messenger. In the mean time I will want for Higbee, Price, and myself five or six hundred dollars. I will send or come to-morrow. The air-guns will cost about twenty or twenty-five dollars in New York. They are needful, and will assist greatly in the safety, certainty, and despatch of our work. Six or eight men have returned from southern Illinois. Most of them go with me. I will leave Denny as executive officer in my absence. I will see you probably no more ere the attempt is made. You know now all that I know. But, Mr. —y, [torn out in the original] let me beg of you to be careful who you tell of our intentions. Nicol is a very imprudent man, and told all in Toronto that you said to him. Men may be brave and efficient in active service, but this is a field in which greed — dence [torn out in the original] and certainly sobriety is demanded. We can and must do our work, and that at an early day. I hope ere long to gratify you by a report of success. All told I have now about twenty-seven men; I hope to make it thirty. I will give you the directions in my report how to send me *men*. I will never return, Mr. —y, [torn out in the original,] until I have done something. If —thing [torn out in the original] else, may I destroy the northern border of Vermont and New Hampshire for 150 miles? Jacobus returned from Windsor last night. I will come or send to-morrow.

"Yours, truly,

"BEN. H. Y.—G—G."

One J. B. Castleman appears to have been engaged in the west as the agent of Clay and Thompson in organizing secret societies and fomenting hostility to the government. The following letter was written by him, and, although the name of the person to whom it was addressed has been cut out, there is no doubt it was written to C. C. Clay, junior. The following is a copy as it appears on the files of the department, mutilated in some particulars :

"LOOKOUT, *September 5, 1864.*

"—Y.:

"DEAR FRIEND: I have directed Shultz to see you before going to Toronto, and hand you the communication he bears. If you consider it favorably, please attend to it with the least possible delay. I apply for such authority because

of knowing the immense good that may in that way be accomplished. I will make to you frequent reports of work accomplished. Another thing of the utmost importance to me is the notification of the secretary of war of the cause of my detention, and a request made him that a notice to that effect be sent to General Morgan. My company and regiment are 'D,' second Kentucky cavalry. I shall rely upon your attending to this matter for me. I must confess I fear, at present, there is little hope for the accomplishment of any great good here. What can be done we will do, and shall rely upon the action of the people irrespective of their leaders. We will have no little difficulty in accomplishing much except through the assistance of their influential men, but their shrinking from responsibility leads me to believe they will do little. I am making arrangements to hold nightly meetings, and, by addressing the country people, shall hope to do something.

"Hunter has c—— [torn out in original] adjoining district, and not having heard —— [torn out in original] Saturday, know not what he is effecting. The cause of Vallandigham and his associates have had a very potent and equally undesirable influence upon the people. They are impressed with the belief that pledges of peace secured their co-operation, and to a peaceful solution they look with eager certainty.

"Present my kindest regards to Ben. Young. Excuse me for reminding you again of the urgent necessity for secrecy in the matter submitted to you. Please, on receipt of these, do me the kindness to go yourself to see Mr. Thompson, and whatever be your decision, send Shultz back at once. With many thanks for the kindness extended to me, to my mother and sisters, and to my comrades when near you, believe me, with true sincerity,

"Your friend,

"J. B. CASTLEMAN."

The following is a copy of a letter from the same person, addressed to "Gentlemen"—T. and C.—meaning, no doubt, Thompson and Clay:

"INDIANA, ———, *September 24, 1864.*

"GENTLEMEN: You find herewith enclosed three extracts which will show for themselves. I regret to say that the greater portion of the business part of Cairo has been destroyed, and among the losses was some stock of my own which was sent there for investment. I was also so unfortunate as to have some lost on the steamer *Jersey** burned, a copy of which disaster you'll find herein.

"For a few days past I have been in Indiana, and find business much more flattering than in Illinois. I return to the latter place to-day and so arrange matters in my district as to give Hunter charge of the business there, and what can be done here I shall do in conjunction therewith. I am going to Indianapolis if a house can be opened there at a reasonable cost. If Hunter is near you remind him of the most urgent necessity of returning to his business. There never has been in this country such a time for a profitable business, and the time must be taken advantage of. The machine in motion, its use will radiate from the point it is introduced. We shall set up shop from within ten to twenty days; and most likely about the former than the latter.

"Most respectfully, your obedient servant,

"C.

"Please deliver this to Messrs. T. and C."

The following letter, which appears to have been written by Thompson to Clay, has reference to the preceding letters written by Castleman to Clay:

* Partially erased in the original.

To [torn out in the original.]

"TORONTO, CANADA WEST, *September 8, 1864.*

"DEAR SIR: The proposition of Captain Castleman embarrasses me. It is evident that no authority of ours can protect him from consequences; and as he and those to be organized by him are officers and soldiers of C. S. A., we have no power to make details. This service, if rendered, would be valuable, but there is no way that I know of but for them to act on their own responsibility. One thing is certain: an authority given by us, if brought out, would place us in an awkward position to the Canadian authorities if a demand was made upon them by the United States. [Torn out in the original] At all events, it is a dangerous subject— ————dle, [torn out in the original,] and one on which I feel unwilling to make documents which may be produced against us, and embarrass the parties who have them.

"I gave Dr. Hunter and Castleman, to take the men to Chicago and take care of them afterwards, \$24,000, and I write a letter to Castleman for our joint signature. If he wants money it is best for him to get it from Hunter—at all events, at first.

"I wish to write to you on other subjects, but have no time now, as Shutz is in a hurry to return.

"I am endeavoring to put the best face on things.

"Your obedient servant,

"J. TH. [remainder torn out in the original.]

The following correspondence discloses the character of the means of bringing about a civil war in the west in the summer and autumn of 1864, and reveals the names of some of the persons engaged in the movement. The first letter is from C. C. Clay, junior, to Jacob Thompson. The following is a copy:

"WELLAN HOUSE, SAINT CATHARINES,

"*July 11, 1864.*

"Hon. J. THOMPSON,* *Montreal:*

"MY DEAR SIR: Walker goes off to-night to United States. He will try to prepare our *friends* to aid us in the *contemplated move*. Dr. Massey is here, son-in-law of Medary, and will stay until Friday. He is a high priest of the Sons of Liberty, and can be employed most usefully for us. He and W. might traverse Ohio, Indiana, and Illinois by 20th, and have all the organizations ready to act in co-operation. You had best come down here immediately and let them know all the plans—they can be communicated to W. by a special messenger—that they may go to work at once. They are only advised that certain confed. escaped prisoners can be employed to start the ball for them if their people will join in the play. They think it will take the fancy of their people, and they will take a hand. They only fear they will not be prepared for it, and will be surprised and stupefied without notice. You need not fear, as they are of the sworn brotherhood. Voorhies is to be here on Monday or Tuesday, and perhaps Ben. Wood. Indeed, I see people from the United States here daily who come to see me. You must not fail to come, and bring plenty of money. Indeed, you had best transfer your bank to Toronto. We can buy passes in United States which will serve our purpose, and two capital stump orators to travel anywhere. Come here as soon as you can; the proprietor and all the people here are your friends. I send this by him.

"In haste, truly yours,

"C., JR."

* Blotted in the original.

The following letter, without signature, was written by Clay to Thompson. This letter is addressed to "W. P. Carson," which was the assumed name of Jacob Thompson. The following is a copy :

"NIAGARA FALLS, C. W.,
"Friday, July 29, 1864.

"Mr. W. P. CARSON :

"DEAR SIR: Our friend had left on my arrival. Your telegraph only reached H. a few minutes since, owing, it is said, to some derangement of the line. He has replied by telegraph to your note brought by me. He expresses himself much surprised and disappointed at it, because, he says, R^w. and himself both understood you to authorize the investment, and R^w. had, before leaving New York, arranged to obtain the goods, after consultation with D. and [in original here follow several words crossed out.] He says R^w., D. and S^v. all left New York with the belief that the goods would soon be sent in small lots to the different points of advantageous sale, especially to Indianapolis, where they are deemed indispensable. There is more formidable competition there than was expected—fully eight hundred well-equipped competitors. The hazard you suggest was fully canvassed, and it was resolved to take it, as the goods were indispensable. However, they did not deem the hazard great. The party interested in the sale understands that delivery must precede payment except as to a small part, which was to be advanced, and which R^w. left here with the intention of advancing out of funds in his hands, and will doubtless do to-morrow, or before he can hear from us. He expected as soon as he [torn out in original] to pay for the goods to leave New York for the west to provide for their disposition in safe hands. He thinks the terms required would be offered R^w., because implying distrust of his fidelity, and, moreover, unnecessary, because in any event we must rely upon his fidelity for the faithful application of the money; hence he thinks it best not to communicate them to R^w., D., or S^v. At the same time, as their services are quite indispensable, he proposes that we forward the small portion of the sum required to be used as earnest of ability and purpose to pay on delivery, and he trusts you will provide the balance. He and I between us could make up about \$30,000, if we can negotiate our drafts, besides the gold I might forward immediately by the special messenger. I think, on learning all the facts, it is best to take the risk, for at best we run the risk of the goods being unavailable even after delivery at the point of destination. I wish your concurrence as the venture. If you concur on this statement of facts telegraph me 'I accept your invitation.' If you will not, telegraph 'I am obliged to decline your invitation.' We fear your non-concurrence will lose the benefit of R^w.'s, D.'s, and S^v.'s aid.

"Again, H. suggests, I think wisely, that your requirements are impracticable; the delay of communicating to and fro would postpone the matter beyond the time when it must be closed. R^w. said every hour was important, as the whole matter must be arranged by him in a short time. He preferred gold to be sent by special messenger. If it could not be had, then sterling bills of different amounts, which he could sell to different purchasers without exciting suspicion."

[No signature]

This correspondence connects Clay and Thompson with the treasonable organizations in the west, which were designed to bring on civil war in that region of country.

The following, without date, appears to be Thompson's reply to the foregoing communication. The signature is partially torn out, but the letters "J. Th—" remain. The letter is as follows :

"DEAR SIR: Your proposition is agreed to substantially, while I fear the experiment as possibly leading to exposure. Such is the fear of B., with whom I have talked. But the party selling must be interested in getting the barrels and accompaniments to the place of destination."

The original, of which the following is a copy, has this indorsement in pencil in the handwriting of Clay:

"Walker's letter of his purchase."

"AUGUST 3, 1864.

"The bearer has just arrived. His delay has been most unfortunate. My purchases amount to over \$75,000. These were made by *order*. It has been very difficult for me to arrange, with the addition of the funds in my office, to prevent trouble. I shall expect you to send me a draft to Indianapolis at the earliest possible moment for \$10,000 in gold (or sterling.) This I wish to send here to square my accounts. My reputation is involved in this, and I trust that you gentlemen in whom I have confided will not leave me to suffer. It was understood that \$50,000 (in currency) should be sent by me to Indianapolis. This answer ought to have been there before now. There are expenses to be incurred there which cannot be avoided. If you have not sent the \$50,000 please send \$10,000 in gold coin, at the time you send the draft for like amount. I start west to-night. Let me impress upon you the necessity of haste. Lose not a moment.

"X."

The following letter, which appears to have been written by Thompson to Clay, has reference undoubtedly to a movement in the west designed to bring on civil war:

"MONTREAL, C. E., June 9, 1864.

"To [torn out]—y:

"MY DEAR SIR: I have remained here for ten days waiting for you. [Torn out] to [torn out] appointment at Toronto [torn out] think I ought to go on. I wanted very much to see you and report progress; but I cannot account for your delay. I hope no accident has happened. I have communicated with New York. A most sensible reliable gentleman has met me here. In the present state of things I do not think anything is opened to us there. I go where I may familiarize myself with the condition of things in the west. George Saunders has gone to see Mr. V. He came from abroad, (Europe,) to do what he says he did not know we were intrusted to do, and he has gone on to do it. There is such a thing as spoiling broth by having too many hands in it. Cleary has been in Toronto for several days. He writes me to come on. I cannot do anything more for the present at this place. Li—[torn out] or hear from you as so—[torn out] as you get this.

"Yours, truly,

"J. T."

The following letter, written by Thompson to Clay, relates also to the same subject:

"TORONTO, CANADA WEST,

"June 11, 1864.

["Torn out.]

"DEAR SIR: Arrived here yesterday, and to-day I leave for Windsor, an arrangement having been made previously for my coming there. Here I became acquainted with Judge Moore, of Kentucky, a true man. He left for Cincinnati last evening, and agreed, if possible, to have an interview with Mr. Pugh, and I requested him to say to Mr. Pugh that you wished to see him. and would meet him at the Clifton House, or such place as he might select. He is to telegraph Mr. Cleary, and Mr. Cleary will notify you. I want you to

see Mr. Pugh. Since I began to write this note I have been informed of your safe arrival at Montreal. When will you join me? because I should be glad to communicate all I know. I shall return from Windsor to this place—how soon I cannot say. I left a ——— I left a note for—[torn out in original.]

“I am, ve—[torn cut,] yr—]torn out.]”

“J. T—[torn out.]”

The following letter, mutilated, written by James P. Holcombe to Clay, throws light upon the plans of the rebels in connexion with the conspiracies in the west:

“SUNDAY NIGHT, 10 J—[torn out.]”

“Clifton H.

“M——y [torn out.]”

“My friend has just left me. As I said to you, he was at first overwhelmed with the responsibility of speedy decision on so momentous a subject. He has been thinking of it ever since, and met with an intelligent and active friend from his State, who came to see me this evening, and who is sanguine as to immediate condition. My friend is not only satisfied that the time has come, but is ready and anxious to prepare as rapidly as possible. He had pondered your inquiries as to the feasibility of certain matters, and has made such pertinent—[torn out] ortant suggestions as to co-operation—[torn out] ost desirable for Carson to see him. I told you he would be one of the M. G. of his State. Our appearance, or his, under the circumstances, at Saint C. tomorrow would excite suspicion. He must leave in the 10 p. m. train. I write to beg Carson to come at 11, or, at all events, at 3 30. Let him come straight to my room, No. 7; and better not seem to know me, or to be seen with me. You [torn out] e him where the room is. Events in W. are likely to precipitate matters if a draft ordered. I am startled at the news, and feel that with activity and prudence Carson's designs may result in grandest *denouement*. I fear to write more explicitly. I hope the asthma is better. If C. can come I will look for no message; if he cannot, telegraph how your asthma is, and I will know it means he cannot be here. In haste truly,

“JAS—[torn out.]”

“This may inform you a few minutes advance of your paper that Wallace whipped, retreating in disorder, and burning bridges; General Tyler prisoner; Colonel Seward wounded and prisoner; and advance yesterday at 11 a. m. sixteen miles from Baltimore; force supposed to be 20,000; some Memphis people I know here.

“I believe Captain Cole true. Some Memphis people know him. He is not smart, but I expect a bold, desperate fellow, and have detained him, thinking he would be useful. I give him ten dollars and pay his bill, but Carson must put him on his account, and at a cheap house, till needed, if he wants him. If he does not, please drop a line to that effect to me. If Carson is not there, detain him till he comes.”

The evidence examined and thus reviewed and presented by the committee upon the preliminary branches of the case establishes, or tends strongly to establish, the following propositions:

First. The rebel authorities at Richmond proceeded systematically and criminally, and in violation of the dictates of our common humanity as well as of the usages of civilized war, to imprison, enslave, and destroy negroes employed as soldiers in the armies of the United States.

Second. They treated with gross injustice and brutal inhumanity those officers who were taken prisoners of war while in command of negro troops who were in the service of the United States.

Third. They systematically, knowingly, and maliciously subjected soldiers of the United States, taken prisoners in war, to the horrors of disease, to brutal exposure to the elements, and to wasting, fatal starvation, and all combined making a chapter of horrors, sufferings, and woes which has no parallel in the annals of any other people, civilized or barbarous.

Fourth. That Davis, Benjamin, Clay, and Thompson planned, organized, and incited the various schemes, expeditions, and conspiracies referred to in the testimony submitted, for the introduction of contagious and infectious diseases into the United States; for the destruction of our commerce upon the rivers, lakes, and ocean; for the release of prisoners at Johnson's island and Camp Douglas; for the indiscriminate destruction of private property upon the border, and the murder of the inhabitants; and, finally, for the overthrow of the government itself by the agency of secret and treasonable organizations in Canada and the States of the northwest.

These criminal acts are a bar to the plea which otherwise, perhaps, might with force and reason be tendered, that Davis and his associates named were incapable of the great crime of assassination.

Men who could remain quiet in the presence and with a full knowledge of the barbarities that were practiced by officers under their authority in the prisons and pens of Richmond, Andersonville, and Salisbury, and who justified themselves to themselves by the consideration that it was necessary to accomplish what they had undertaken, cannot now plead that it is improbable that they should have procured the assassination of those who stood in the way of the accomplishment of their design. It now remains for the committee to present the evidence tending more directly to implicate Davis, Benjamin, Clay, and Thompson in the assassination of President Lincoln.

We herewith submit copies of several papers found in the rebel archives, showing that propositions were made by different parties for the destruction of persons connected with the government of the United States, and in the indorsements thereon it appears that the propositions were not only not rejected but were entertained and considered.

The first of these is a letter from a man named De Kalb, dated Richmond, June 19, 1861, and addressed to the secretary of war. The writer says:

"Your honor is undoubtedly aware that on the fourth of next month the northern Congress assembles, and that the federal Capitol, as well as the public buildings, are undermined. In regard to this matter I very respectfully beg the honor of a few moments private audience. Most deferentially, your honor's obedient servant,

"CAMILLE LA VALLIERE DE KALB."

On this letter is the indorsement of the name of the writer, date of the letter, and the phrase "About blowing up the Capitol at Washington."

It seems from the following letter, dated June 20, 1861, that De Kalb had an interview with the rebel secretary of war, L. P. Walker, on the very day when the first communication by De Kalb was made; and it seems also from De Kalb's letter of the 20th of June, 1861, that Walker did not hesitate to employ him on account of any objections he entertained against the performance of the deed, but for the reason that De Kalb was a stranger to him. The following is a copy of De Kalb's letter of June 20, 1861:

"RICHMOND, June 20, 1861.

"HON. P. WALKER,

"*Secretary of War, Southern Confederacy:*

"SIR: In reference to the subject upon which I had the honor to converse with you yesterday, and on account of which you bade me call to-day, I take herewith the freedom to address this most respectful writing to you.

"Your honor seemed to hesitate in giving me an affirmative answer to my statements because I were unknown to you. Permit me to remark, that notwithstanding I can give you no references in this country, I am, nevertheless, fully worthy your high confidence. My grandfather, Major General Baron De Kalb, fell in the revolutionary war of this country, at Indian Mills, Camden, North Carolina. I received an education proportionate to the means of my parents; served in the Crimean war as second lieutenant of engineers; family troubles induced me to leave my country; I landed in Quebec, Canada East, in November last; arrived in Washington, District of Columbia, about three weeks ago.

"This is a short outline of my history. But I cannot in the least perceive why your honor should hesitate because I am a stranger to you. The matter is, to my poor, ignorant, perception, nothing requiring either references or confidence, for I do surely not expect to reap personally any benefits before the strict performance of what I undertake. The task, I know, is connected with some danger, but never will it, in any event, become known in the north that the southern confederacy had anything whatever to do with it.

"The whole transaction dissolves itself, therefore, into this one question:

"Does the southern confederacy consider the explosion of the federal Capitol, at a time when Abe, his mirmidons, and the northern Congress members are all assembled together, of sufficient importance as to grant me, in case of success, a commission as colonel of topographical engineers, and the sum of one million dollars? If so, your honor may most implicitly count the transaction to be carried into execution between the 4th and 6th instant, and as good as already accomplished. I trust you will not press me in regard to the manner in which I intend to perform it, or anything connected with the execution.

"In case of an affirmative answer there is no time to spare; and to show you still further my sincerity, I will even refrain from asking for any pecuniary assistance in carrying the project through, notwithstanding my means are for such an undertaking very limited, and that some funds would materially lighten my task, diminish the danger, and doubly insure success. But I beg you for a passport so as to travel by Va. C., O. and A. M., G. R. Rs., as I intend to throw myself at a convenient place into Maryland, and to enter Washington by way of Baltimore.

"Very respectfully, your honor's most obedient servant,

"C. L. V. DE KALB."

Upon this letter is the indorsement in pencil, partially erased, ("See this man with Benjamin. *File.*") The letter and the indorsement show that Walker not only received and considered the proposition contained in the letter, but that he had an interview with the writer, and that it was his purpose to have another interview with him in company with Benjamin, secretary of state.

On the 12th of September, 1861, a letter was written to Jefferson Davis by J. S. Parramore, which was received, as appears by the indorsement, on the 20th of the same month. The following is a copy:

"BOSTON P. O., THOMAS COUNTY, GA., *September 12, 1861.*

"JEFFERSON DAVIS :

"SIR : Having a desire to be of benefit to the Confederate States is the only excuse I can offer for addressing you a letter; and believing the best plan would be to dispose of the leading characters of the north, for that reason I have tried and experimented in certain particulars that will do this without difficulty, although it is quite an underhanded manner of warfare, and not knowing whether it would meet with your approbation or not prevents me from giving you a full account of the material used, although I believe any one of them would take the life of a southern man in any manner they could. If you wish it write to me and get the whole process. Hoping you good health and future victory,

"J. S. PARRAMORE"

At the top of this letter, in the handwriting of Jefferson Davis, is the following note: "Secretary of War. J. D." Upon the back of this letter is this indorsement, under the name and residence of the writer: "Has discovered mode of disposing of the leading characters at north. File."

On the 17th of August, 1863, one H. C. Durham writes to Jefferson Davis a letter, of which the following is a copy:

"HEADQUARTERS SIXTY THIRD GEORGIA REGIMENT,
"Thunderbolt Battery, near Savannah, Ga., August 17, 1863.

"TO PRESIDENT DAVIS.

"MR. PRESIDENT: After long meditation and much reflection on the subject of this communication I have determined to intrude it upon you, earnestly hoping my motives will constitute a full vindication for such presumption on the part of one so humble and obscure as myself; though I must say that the evidences of your Christian humility almost fully assure me.

"I propose, with your permission, to assist in organizing a number of select men, say not less than three to five hundred, to go into the United States and assassinate the most prominent leaders of our enemies; for instance, Seward, Lincoln, Greeley, Prentice, &c.

"Considering it unnecessary to discuss the chances of success at this time, I will only say a few words as to the opinion of its effects.

"I have made it a point to elicit the opinion of many men upon this subject, in whose good sense I have great confidence, and while a difference of opinion to some extent is almost inevitable, most have confidence in its benefits to us. The most plausible argument seems to be that, to impress upon the northern mind that for men in high places there to wield their influence in favor of the barbarisms they have been so cruelly practicing upon us, is to jeopardize their lives. For designing leaders there to feel that the moment they array hordes for our desolation, at that moment their existence is in the utmost peril, would produce hesitation and confusion that would hasten peace and our independence.

"With these meagre suggestions upon this subject I will leave it for this time.

"If you deem this matter worthy of any encouragement, and will so apprise me, I believe I can give you such evidences of loyalty and integrity of character as will entitle it to your consideration, so far as I am concerned.

"I will say, however, that I was born and raised in middle Georgia. All my relationship and affections are purely southern. I was opposed to secession, but am now committed to the death against subjugation or reunion with men of whose instincts and moral character, till this war, I was totally ignorant.

"If I have insulted any scruple or religious principle of yours I beg to be pardoned.

"I neglected to state, in the proper place, that I am a non-commissioned officer in the volunteer service. Begging your respectful attention to this communication,

"I am your excellency's most obedient servant,

"H. C. DURHAM,

"Co. I, 63d Reg. Ga. Vols., Savannah, Ga.

"His Excellency President DAVIS, Richmond."

This letter was received August 24, 1863, and is indorsed as follows:

"Asks permission to take from three to five hundred men and assassinate the leading men in the United States.

"Respectfully referred, by direction of the president, to the honorable secretary of war.

"J. C. IVES, Colonel and A. D. C.

"AUGUST 24. File."

In addition to the testimony thus presented upon this point, the committee refer to a letter of Lieutenant W. Alston, which was produced at the trial of the conspirators for the assassination of President Lincoln, from which the following is an extract :

"I now offer you my services, and if you will favor *me in my designs*, I will proceed, as soon as my health will permit, to rid *my country* of some of her deadliest enemies, by striking at the very *hearts' blood* of those who seek to enchain her in slavery. I consider nothing *dishonorable*, having such a tendency. All I ask of you is, to favor me by granting me the necessary papers, &c., to travel on. * * * *I am perfectly familiar with the north*, and feel confident that I can *execute* anything I undertake. I was in the raid last June in Kentucky, under General John H. Morgan; * * * I and all of my command excepting about three or four, and two commissioned officers, were taken prisoners; * * * escaped from them by dressing myself in the garb of a citizen; * * * I went through to the Canadas, from whence, by the assistance of *Colonel J. P. Holcomb*, I succeeded in working my way around and through the blockade. * * * I would like to have a *personal* interview with you, in order to perfect the arrangements before starting."

The following are the indorsements upon the above communication :

"A. 1,390. Lieutenant W. Alston, Montgomery, Sulphur Springs, Virginia—
[no date.]

"Is lieutenant in General Duke's command. Accompanied raid into Kentucky and was captured, but escaped into Canada, from whence he found his way back. Been in bad health. Now offers his services to rid the country of some of its deadliest enemies. Asks for papers to permit him to travel within the jurisdiction of this government. Would like to have an interview and explain.

"Respectfully referred, by direction of the president, to the honorable secretary of war.

"BURTON N. HARRISON, *Private Secretary*.

"Received November 29, 1864.

"Recorded book A. A. G. O., December 15, 1864. A. G., for attention.

"By order : J. A. CAMPBELL, A. S. W."

[See "Assassination of President Lincoln," by Ben. Pitman, p. 52.]

The committee also call attention to the letter of W. S. Oldham, addressed to Jefferson Davis, at Richmond, February 11, 1865, and reported at length in Pitman's "Assassination of President Lincoln," page 48, of which the following is a copy :

"RICHMOND, *February 11, 1865*.

"His Excellency JEFFERSON DAVIS, *Pres't C. S. A.* :

"SIR: When Senator Johnson, of Missouri, and myself waited on you a few days since, in relation to the prospect of annoying and harassing the enemy by means of burning their shipping, towns, &c., there were several remarks made by you upon the subject that I was not fully prepared to answer, but which, upon subsequent conference with parties proposing the enterprise, I find cannot apply as objections to the scheme.

"1. The combustible material consists of several preparations, and not one alone, and can be used without exposing the party using them to the least danger of detection whatever. The preparations are not in the hands of McDaniel, but are in the hands of Professor McCullough, and are known but to him and one other party, as I understand.

"2. There is no necessity for sending persons in the military service into the enemy's country; but the work may be done by agents, and in most cases by persons ignorant of the facts, and therefore innocent agents.

"I have seen enough of the effects that can be produced to satisfy me that in most cases, without any danger to the parties engaged, and in others but very slight, we can, first, burn every vessel that leaves a foreign port for the United States; second, we can burn every transport that leaves the harbor of New York, or other northern port, with supplies for the armies of the enemy in the south; third, burn every transport and gunboat on the Mississippi river, as well as devastate the country of the enemy and fill his people with terror and consternation. I am not alone of this opinion, but many other gentlemen are as fully and thoroughly impressed with the conviction as I am. I believe we have the means at our command, if promptly appropriated and energetically applied, to demoralize the northern people in a very short time. For the purpose of satisfying your mind upon the subject, I respectfully but earnestly request that you will have an interview with General Harris, formerly a member of Congress from Missouri, who, I think, is able, from conclusive proofs, to convince you that what I have suggested is perfectly feasible and practicable.

"The deep interest I feel for the success of our cause in this struggle, and the conviction of the importance of availing ourselves of every element of defence, must be my excuse for writing you and requesting you to invite General Harris to see you. If you should see proper to do so, please signify the time when it will be convenient for you to see him.

"I am, respectfully, your obedient servant,

"W. S. OLDHAM."

[Indorsement.]

"Hon. W. S. Oldham, Richmond, February 12, 1865. In relation to plans and means for burning the enemy's shipping, towns, &c. Preparations are in the hands of Professor McCullough, and are known only to one other party. Asks the President to have an interview with General Harris, formerly a member of Congress from Missouri, on the subject."

[Second indorsement.]

"Secretary of State, at his convenience, please see General Harris and learn what plan he has for overcoming the difficulty heretofore experienced.

"J. D.

"20 Feb'y, '65.

"Rec'd Feb'y 17, 1865."

These documents are conclusive upon the point that Davis, Benjamin, and Walker, in the years 1861, '62, '63, '64, and '65, received, entertained and considered propositions for the assassination of the chief members of the government of the United States, and thereupon a probability arises that they took steps to accomplish the purpose which for so long a period of time they entertained and considered.

The testimony taken at the trial of the assassins justifies the inference that the murder of Mr. Lincoln was procured by the use of money furnished by the Richmond government. Louis J. Weichman states that Surratt arrived in Washington on the 3d of April, 1865, from Richmond; that he there had had an interview with Davis and Benjamin, on or about the 25th of March preceding; that Surratt had in his possession at that time a considerable quantity of gold, and that he remained in Washington but a few hours. Surratt is connected with Booth and with the assassination by an amount of testimony which cannot be controlled. Samuel Knapp Chester stated, upon the conspiracy trial that he was acquainted with Booth, and that Booth, on several occasions, tried to induce him to take part in kidnapping or murdering the President. At one time Booth sent him by letter the sum of \$50. When Chester finally positively refused to take part in the crime, he returned the money to Booth—Booth saying, as he received it, that he would not allow Chester to do so but that he was

so very short of funds, and that he or some other party must go to Richmond and obtain means to carry out their designs.

The interview appears to have been as late as the month of February, 1865, and it is probable, in view of all the facts, that the visit of Surratt to Richmond and his return with funds was in obedience to the necessity disclosed by Booth in the conversation with Chester. The fact that Surratt was in the secret service of the Richmond government is proved by the testimony of James H. Fowle. This witness was himself in the secret service of the confederate government, as agent of the state department, and his appearance before the committee, in obedience to the authority of the House of Representatives, was against his own wishes, and without any previous knowledge on his part. His testimony discloses the fact that he is in a degree an unwilling witness; that he desired to avoid implicating the leaders of the rebellion in any criminal acts, and that he is still devoted to the cause of the rebellion. The committee were assured, however, that he is a man of truth.

Fowle says that he was first acquainted with John H. Surratt in February, 1865, but that he had heard of him before. He knew he was an agent of the rebel government, and had heard of him as such from the 16th day of May, 1863. He says he knew that Surratt was a bearer of despatches, and that he was in Richmond about January or February, 1865. He states further that he thinks Surratt was a secret agent of the state department, but does not positively know it; that "each agent was kept to himself. One did not know about the other." Benjamin told him Surratt was there, and Quinton Washington told him the same thing. This information from Benjamin and Washington he received on the 2d or 3d of March, 1865. The testimony thus far adduced renders it certain that Surratt was employed in the secret service of the rebel authorities of Richmond; that he probably received money in his capacity as agent from the state department; and hardly a doubt exists that the funds received by him were paid to Booth for the commission of the crime of assassinating the President. Documentary evidence in possession of the government shows that the secret service fund was in the sole custody and under the exclusive control of Davis, and that no money was paid from that fund except by his authority. This fact appears from the correspondence between Benjamin and Holcombe, already quoted, and it is confirmed as the settled policy of the rebel government by correspondence between Benjamin and Seddon in January, 1865. On the 16th of January, 1865, Seddon wrote a note to Davis, in which he says he has received a despatch from General Hardee, requesting that he may be furnished with funds for secret service. At the same time, as appears by the reply of Benjamin, of the same date, he encloses a letter from Thomas M. Conrad, a copy of which is herewith given:

"KING GEORGE COUNTY, VIRGINIA,

"January 10, 1865.

"HON. JAMES A. SEDDON, *Secretary of War*:

"Our agents write me from Washington for funds. Let me, therefore, give a statement and ask for an order. I received from the Hon. secretary of state, Mr. Benjamin, last *September*, \$400 in gold, which yielded me \$1,000 in northern funds. This has borne the expenses of *five of us* for *four months*, (including two horses,) averaging \$50 a month therefor. You at once perceive the economy we have practiced. It would have been much more had we not used our private funds in many instances. If our services have been satisfactory, I would be obliged if the honorable secretary would, at his pleasure, remit a draft, which I can have cashed, I presume, and thus relieve us of embarrassment, and encourage us to continue our labors. Commending it to your attention, I am,

"Respectfully, your obedient servant,

"THOMAS M. CONRAD.

"Upon hearing from you I shall leave for Washington, unless otherwise ordered by you.

This communication was referred by Seddon to the secretary of state. In reply to this reference and the enclosures Benjamin says: "There is but one way in which these funds can be given you. * * * It is necessary to address to the president a request that *you* be furnished with the money, and the exact sum must be stated so that he can draw a requisition."

It thus becomes satisfactorily established that no money could be drawn from the secret service fund except by Davis himself.

The facts that Surratt was in the secret service of the state department; that he was in Richmond on the 25th of March; that he then had an interview with both Davis and Benjamin; that he returned to Washington on the 3d of April, and there had in his possession a considerable sum of money in gold; that he left for Canada and returned again to Washington on the 14th of April, and that his connexion and complicity with Booth in the assassination does not admit of doubt, present a mass of connected testimony implicating Davis directly in the assassination of the President which, in an ordinary trial for murder, would go very far toward the conviction of the person accused.

It is also a significant fact that Booth, at the time of the assassination, had in his possession the same cipher which was used by Benjamin, as appears in the testimony given by Messrs. Dana and Eckert upon the conspiracy trials, page 41. It is, to be sure, possible that Booth might have obtained it from some agent of the rebel state department. But connected as he is, by the testimony, with Davis and Benjamin directly, by his own visits to Richmond, and indirectly through Surratt, the circumstance that he was in possession of the cipher used by Benjamin in the office of secretary of state leaves no room to doubt that he obtained it from Benjamin or Davis, and that it was the means by which the secret correspondence between the parties was carried on.

It is not unimportant, in this connexion, to quote the words used by Davis when the despatch of John C. Breckinridge, announcing the assassination of President Lincoln, was read by him. Lewis F. Bates testifies that Davis remarked, "Well, general, I do not know; if it were to be done at all it were better that it were well done; and if the same had been done to Andy Johnson, the beast, and to Secretary Stanton, the job would then be complete." These are not the words of a man who was either grieved or surprised, but rather the unpremeditated declaration of one who realizes that a crime which he anticipated has been committed but in part only, and at a moment too late to save a cause already rendered desperate by the conflicts and disasters of war.

The remark made by Davis on the receipt of the intelligence that Mr. Lincoln had been assassinated is in harmony with the conversation of his agents Thompson, Tucker, and others in Canada, as given by Richard Montgomery in his testimony in the "assassination trials." It is proper to say that Montgomery, in the year 1864 and the early part of 1865, possessed the confidence of Thompson and others, and was frequently employed in the secret service of the rebel government. He has been examined by the committee, and they have entire confidence in his statements. He is now employed by the government of the United States, and as far as the committee have been able to ascertain, there is no reason to question his integrity in all particulars. He says in his testimony, (Assassination of President Lincoln, by Benn. Pitman, pages 24, 25, 26 :) "In a conversation I had with Jacob Thompson in the summer of 1864, he said he had his friends (confederates) all over the northern States, who were ready and willing to go any lengths to serve the cause of the south, and he added that he could at any time have the tyrant Lincoln, and any other of his advisers that he chose, put out of his way.

"He would have but to point out the man that he considered in his way, and

his friends, as he termed them, would put him out of it and not let him know anything about it if necessary, and that they would not consider it a crime when done for the cause of the confederacy. Shortly after Mr. Thompson told me what he was able to do, I repeated the conversation to Mr. Clay, who said, 'That is so; we are all devoted to our cause and ready to go any lengths, to do anything under the sun to serve our cause.' " Speaking of the events that occurred after the assassination, Montgomery says: "I have been in Canada since the assassination. A few days after, I met Beverly Tucker at Montreal. He said a great deal about the wrongs that the south had received at the hands of Mr. Lincoln, and that he deserved his death, and it was a pity he did not meet with it long ago. He said it was too bad that the 'boys had not been allowed to act when they wanted to.' 'The boys' was an expression applied to the confederate soldiers and others in their employ who engaged in raids, and who were to assassinate the President. I related a portion of the conversation I had had with Mr. Thompson to Mr. W. C. Cleary, who is a sort of confidential secretary to Mr. Thompson, and he told me that Booth was one of the parties to whom Thompson had reference; and he said, in regard to the assassination, that it was too bad that the whole work had not been done, by which I understood him to mean that they intended to assassinate a greater number than they succeeded in killing. Cleary remarked, when speaking of his regret that the whole work had not been done, 'they had better look out; we have not done yet; and, 'he added, that they would never be conquered—would never give up.' Cleary said that Booth had been there visiting Thompson twice in the winter; he thought the last time was in December. He had also been there in the summer."

* * * * *

"When Mr. Jacob Thompson spoke to me of the assassination, in January of this year, he said he was in favor of the proposition that had been made to him to put the President, Mr. Stanton, General Grant, and others, out of the way; but had deferred giving his answer until he had consulted his government at Richmond, and that he was only waiting their approval. I do not know, of my own knowledge, that he received an answer; my impression, from what Beverly Tucker said, was that he had received their answer and their approval, and that they had been detained waiting for that."

In his testimony before the committee Montgomery says: "In almost every part of Canada, ranging from Montreal to Niagara Falls, including both points, and almost daily, when I was there, I heard Thompson, Tucker, and Clay certainly use threats in general terms against officers of the government, and especially against Mr. Lincoln, in a manner like this: 'They had better look out for themselves; our people are getting exasperated; they will get themselves into trouble they little dream of.' "

Thus it is seen that there is substantial harmony between the evidence furnished by the official documents found in the hands of the rebel authorities and the testimony of Montgomery as to the participation of Davis, Thompson, Clay, Cleary, and others, in the scheme for the assassination of the President.

When the committee entered upon this investigation in April last, the evidence in the War Department, if accepted as true, was conclusive as to the guilt of Jefferson Davis.

The Judge Advocate General had taken the affidavits of several persons who professed to have been in the service of the rebel government and who had been present at an interview between Surratt and Davis and Benjamin.

Those affidavits were taken by the Judge Advocate General in good faith, and in full belief that the affiants were stating that only which was true.

The statements made by these witnesses harmonized in every important particular with facts derived from documents and other trustworthy sources. The committee, however, thought it wise to see and examine some of the persons

whose affidavits had been taken by Judge Holt. Several of the witnesses when brought before the committee retracted entirely the statements which they had made in their affidavits, and declared that their testimony as given originally was false in every particular.

They failed, however, to state to the committee any inducement or consideration which seemed to the committee a reasonable explanation for the course they had pursued; and the committee are not at this time able to say, as the result of the investigations they have made, whether the original statements of these witnesses are true or false. But the retraction made by some of them deprives them of all claim to credit, and their statements so far impeach or throw doubt upon the evidence given by other witnesses, whose affidavits were taken by Judge Holt, that the committee in the investigations they have made, and in this report, have discarded entirely the testimony of all those persons whose standing has been so impeached. On the other hand, the committee have relied very largely upon documents found in the rebel archives, and have introduced only the testimony of those persons whose reputation for truth and veracity has not been impeached by any of the investigations that have been made.

Nor has it been the purpose of the committee to draw unnatural or forced inferences from the trustworthy testimony which they have examined, but rather to present to the House a truthful statement of the facts. The committee are of opinion that it is the duty of the executive department of the government, for a reasonable time and by the proper means, to pursue the investigation for the purpose of ascertaining the truth.

If Davis and his associates are innocent of the great crime with which they were charged in the President's proclamation, it is due to them that a thorough investigation should be made, that they may be relieved from the suspicion that now rests upon them.

If, on the other hand, they are guilty, it is due to justice, to the country and to the memory of him who was the victim of a foul conspiracy, that the originators should suffer the just penalties of the law. The committee are of opinion that the work of investigation should be further prosecuted, and they therefore, in conclusion, recommend the adoption of the following resolutions:

Resolved, That there is no defect or insufficiency in the present state of the law to prevent or interfere with the trial of Jefferson Davis for the crime of treason, or any other crime for which there may be probable ground for arraigning him before the tribunals of the country.

Resolved further, That it is the duty of the executive department of the government to proceed with the investigation of the facts connected with the assassination of the late President, Abraham Lincoln, without unnecessary delay, that Jefferson Davis and others named in the proclamation of President Johnson, of May 2, 1865, may be put upon trial, and properly punished if guilty, or relieved from the charges against them if found to be innocent.

Mr. ROGERS, the minority of the Select Committee on the Assassination of Lincoln, submitted the following as the

MINORITY REPORT.

The undersigned, a minority of the Judiciary Committee, to whom was referred an investigation as to what complicity, if any, Jefferson Davis, Clement C. Clay, George N. Sanders, and others had in the assassination of Mr. Lincoln, beg leave to report:

When I entered upon the duties of this investigation I did so with a deep sense of the importance, difficulty, and delicacy of the task imposed upon the committee. The government, by the offers of enormous rewards and the wording of its proclamations, spread over the land a belief that Clement C. Clay, George N. Sanders, Jefferson Davis, and others were, or might be, implicated in the assassination of the late President, Abraham Lincoln. The historic importance and record of the accused were of a character to make the truth of this charge a disgrace, not only to any one particular section of the country, but to the whole of it; and the additional crimes thereafter imputed to them were of that awful nature which, when they are committed by men who have sat in its high places, they blacken the civilization of the nation in which they were trained and preferred.

On the other hand, if it should turn out that those charges had been lightly made, and without satisfactory evidence as to a probability of their truth, the government so solemnly making them must needs suffer in the esteem of all good men as being lacking in coolness during a general excitement, and as sharing a fear which it was its province to dispel.

Knowing the entire unreliability of any testimony whose origin cannot be traced beyond a professional detective, especially when large rewards stand out in placarded prospective, I determined, as far as in me lay, to give to every shred of evidence presented as thorough an examination as I might be capable of bestowing upon it; and in this spirit, with no desire to convict or to acquit capable of mastering my wish to educe the truth, I tried to ascertain it, and this report is the result of the effort.

For some reason or reasons not fully stated, the majority of the committee determined to throw in my way every possible impediment, not only in any assistance I might try to render them in what I considered a common task upon us by the House, but even in my working out any conclusion for myself, when it became evident that in this thing they not only would have none of my assistance or fellowship, but resented deeply any attempt of mine to render any.

I felt I must work out my own convictions, not with the committee, but in spite of it. The papers were put away from me, locked in boxes, hidden; and when I asked to see them, I was told, day after day and week after week, that I could not. All sorts of reasons were assigned for this, sometimes one, sometimes another; and, finally, I was told I should not.

The House will recollect I brought the matter before it, and that the Speaker decided I was not entitled to see the papers on which my opinions, as member of that committee, must be based, till such time as the other members of the committee chose to allow me, by saying they were done with them; and it was not till twelve o'clock yesterday that I was allowed freely to look through them, and derive any knowledge based upon examination for the purposes of this report. It was said the interests of the government required that none should see these papers save and only Mr. Boutwell, the honorable member from Massachusetts, who was preparing the majority report. I felt hurt at this, but I should not have alluded to this strange action on the part of the com-

mittee but that it was necessary to explain any lack of brevity and clearness that may be apparent in portions, or in the whole, of this report, which, awaiting the right to see the papers, or rather the power, I did not commence till too late. If, therefore, this report be longer than it need to have been, or if it be less clear than such a report ought to be, the cause must be found in those reasons which induced my colleagues of the committee to endeavor to keep me in the dark till it was too late for me to use the light.

As the members of the committee are members of this house, I will not presume to say they had any fear of an investigation of their doings in their examinations. As they are gentlemen, and bound by that character not to hide the truth, or any part of it, I will not say they kept me in the dark to the last hour to prevent my making any report at all, but this I must say in justice to myself, that had they allowed me to use the usual privileges from which they excluded me, this report would have been of more benefit to the cause of justice and of truth than I can now hope to make it. I should also have accompanied the deductions of this report with ampler extracts of the testimony, showing conclusively the existence and fostering, the hiring and the paying, of the most wicked combination of perjurers the world has ever known.

The main portions of the testimony alleged to connect Mr. Davis and others with the assassination of Mr. Lincoln were *all* taken in the absence of Mr. Davis and of any counsel for him and of any person capable of cross-examining and explaining the testimony. In the words of the late Attorney General, "Most of the evidence upon which they are based was obtained *ex parte*, without notice to the accused, and while they were in custody in military prisons. Their publication might wrong the government." Mark, the government, not the accused. The Secretary of War, February 7, 1866, writes to the President that the publication of the reports of the Judge Advocate General on this matter "is incompatible with the public interests." This report, in the testimony it quotes, will show that the interests of the country would never have suffered by the dispensing with illegal secrecy; but that the interests and fame of the Judge Advocate General himself would suffer in the eyes of all the truth-loving and justice-seeking people on earth.

Secrecy has surrounded and shrouded, not to say protected, every step of these examinations, and even in the committee-room I seemed to be acting with a sort of secret council of inquisition, itself directed by an absent vice-inquisitor, and grand inquisitor too.

How such an un-American mode of procedure for the discovery and prosecution of crimes cognizable by the civil tribunals of the country could ever exist in it I find it impossible to fully understand or explain.

The substance of the testimony rendered before the committee, *viva voce* and documentary, is fresh in my memory, and also the result of some of the investigations made into their credibility. It was in ascertaining the latter that I found myself forced to travel over the nebulous and extended region of the so-called "assassin trial."

There are two reports of this trial. One approved by Mr. Holt, revised by Mr. Burnett, and the Associated Press report, published by Peterson & Co., of Philadelphia. Whatever of suspicion may naturally attach to the former, none can to the latter.

It will be remembered by the House that four persons were hung by the unconstitutional tribunal referred to; and that it was before this house, court, commission, or whatever you choose to call it, that Jefferson Davis was, after the military manner, charged with "combining, confederating, and conspiring" with Booth, Surratt *et al.* The specification to the charge went still further, for that accused them with inciting and encouraging John Wilkes Booth *et al.*

At this trial the first and most important part of a long tissue of falsehoods was introduced to connect Mr. Davis with the assassination.

The parties unconstitutionally killed through the subservient instrumentality of this so-called court or commission were all charged with conspiring with Davis, and it did seem strange to me that neither they nor their counsel made such examination of the witnesses to this as might have been expected. The reason was obvious enough, however.

In the progress of that trial every precaution taught by ages of experience and sanctified by authority was set aside.

The prisoners, said to have been incited to murder, by bullet, by infection, by arson, and by poison, by Jefferson Davis, were brought to hear these charges and specifications with irons upon them, with irons, too, of an unusual construction, irritating and painful, well calculated to distract their attention from the sayings of the military prosecutor. The House will remember that, since the trial of Cranbourne, in 1696, tried for conspiring against the life of the King of England, for raising a rebellion in aid of a foreign enemy, no prisoner has ever been tried in irons before a legitimate court anywhere that English is spoken. The chief justice of England said :

"Look you, keeper, you should take off the prisoners' irons when they are at the bar, for they should stand at their ease when they are tried."

But the parties alleged to have been incited by Mr. Davis did not so stand, but stood in constraint and in pain, with their heads buried in a sort of sack, devised to prevent their seeing! In this plight, from dark cells, they were brought to be charged with having been incited by Mr. Davis, and to it they pleaded not guilty.

As the congressional committee believe secrecy necessary, as the Attorney General that was recommends it, and the Secretary of War orders it, so that court practiced it; and it was in secret, with closed doors, the perjured reporter present, that the chief testimony alleged to implicate Mr. Davis was taken; and this testimony would not now be publicly known had it not been published in Cincinnati, through Pitman's violation of his oath.

Having arrived at the manner in which this testimony was taken, there now remained for me only to ascertain how far it could be relied on, and what it professed to prove. It is a theory of courts military that when the accused are unprovided with counsel, the prosecutor, technically termed "the judge advocate," shall defend the accused as well as plead the accusation—in fact, be a sort of *amicus curiæ*, not only to the court, but to the accused. Messrs. Davis, Clay, Thompson, *et al.*, had no counsel of course, and the only lawyer for the other accused, capable of grasping the subject, was insulted by the court in a manner so repugnant to personal self-respect and professional dignity that he left it, and in lieu of cross-examining testimony was forced to confine himself to the production of an argument against the constitutionality of the court—an argument whose soundness has been indorsed by the decision of the Supreme Court in the *habeas corpus* case of Milligan, Bowles, and Hersey. The lawyer so insulted and so feared was a senator of the United States, whose reputation is second to none in this country; once an Attorney General of the United States and for years the leader of its bar.

That I should be jealously excluded by the committee from investigating the testimony Reverdy Johnson was thus prevented from testing; that the gentleman from Massachusetts and the chairman of the committee should use towards me the very same measures and means adopted by Generals Hunter and Harris, must, it would seem, be due to their acting under similar motives.

It was therefore natural that in trying to investigate the charge of complicity made against Mr. Davis, this continual attempt at secrecy, these unusual means to prevent any searching examination into the reliability of the testimony, should lead me to suspect that these charges were hastily and lightly made, and that the President had been misinformed, and wilfully or recklessly misled when he

fulminated a charge so dire against men so prominent, and just then the observed of the nation. This secrecy on the part of the court, this avoidance of legitimate scrutiny, led me to conclude that my first duty was to ascertain the character of the witnesses, to sift it thoroughly, and to ascertain by what, if any, motives they were actuated in the delivery of their oral evidence and written affidavits.

Sanford Conover, the principal witness and originator of all the oral testimony relevant, procured by the Bureau of Military Justice to establish the guilt of Davis, was examined by the Committee on the Judiciary. The method of his examination was this: The testimony he had given at the mock-trials on the 20th day of May, 1865, was read to him, and he said it was all true. In that testimony he was asked, being duly sworn: "Question. State your full name and present place of residence. Answer. Sanford Conover, Montreal, Canada."

On the 8th of June I find he swore "upon the Holy Evangelists" that his name is *not* Sanford Conover, but James Watson Wallace, and in the same positive manner he denies under oath in Canada all he swore to in Washington, and ends by making the following proposition:

"Five hundred dollars reward will be given for the arrest, so that I can bring to punishment in Canada, the infamous and perjured scoundrel who recently personated me under the name of Sanford Conover, and deposed to a tissue of falsehood before the military commission at Washington.

"JAMES W. WALLACE."

Conover having finally admitted that he and Wallace were one man with two names, and Wallace swearing that Conover is a scoundrel whose testimony before the military commission was but a tissue of falsehoods, might well relieve me from all analysis of the testimony given by him until such crime as perjury in two courts, delivered from any motive, becomes a certificate of truth telling in the other.

It were needless to detail here *what* Conover, alias Wallace, deposed to at the mock-trial, and that is the testimony of his which Mr. Holt forwarded to the Judiciary Committee. A garbled report of it by Pitman, bearing the unsatisfactory authentication of Messrs. Holt and Burnett, will be found in Pitman's report, page 28. A report correct to a word, taken by the reporters of the Senate corps, and given by Holt to the Associated Press, will be found in the Associated Press copy of "The Conspiracy Trials," published in Philadelphia by T. B. Peterson & Bros., page 137.

The testimony of Conover, had it been credible, would establish the guilt of Jefferson Davis, George N. Saunders, Jacob Thompson, Clement C. Clay, Dr. Blackburn, Beverley Tucker, Wm. C. Cleary, Lewis Castleman, the Rev. M. Cameron, Mr. Porterfield, Dr. M. A. Pallin, Captain Magruder, General Frost, and General Carroll, with whom he says he was intimately acquainted in Montreal, Canada, where he had resided from October, 1864. He says he saw Surratt on the 7th of April, 1865; describes him, and says he heard a conversation between him and Jacob Thompson, in the room of the latter, whence it appeared that Surratt had brought Thompson despatches from Richmond, one from Benjamin, and also a letter in cipher from Mr. Davis. "Previous to that," says Conover, "I had had conversation with Mr. Thompson relative to the plot to assassinate Mr. Lincoln and his cabinet, and I had been invited by Mr. Thompson to participate in the enterprise." Thompson laid his hand on the despatches brought by Surratt, Conover asserts, and said, "This makes the thing all right," referring to the assent of the rebel authorities. Mr. Lincoln, Mr. Johnson, the Secretaries of War and of State, Judge Chase, and General Grant were to be the victims.

Conover asserts his first interview with Thompson was in February, 1865, and that at that first interview Thompson said to him, "Some of our boys are

going to play a grand joke on Abe and Andy." The joke, Thompson explained to Conover at this first interview, was to kill them, and at this same interview Conover says that Thompson explained to him that the killing of a tyrant was no murder; that it was only a removal from office. Thompson told Conover, too, that he had commissioned Booth, and all engaged to do the killing would receive commissions, and if they escaped to Canada they could not be successfully claimed under the extradition treaty.

Conover states, further, that the very day of the assassination, or the day before, he had a conversation with Cleary at the St. Lawrence hotel, Montreal. They spoke of the rejoicings in the north over the surrender of Lee, and Cleary, according to Conover, said they would put the laugh on the other side of their mouths in a day or two, and, adds Conover, "the conspiracy was talked of at that time about as commonly as one would speak of the weather."

Conover asserts, also, that Saunders spoke to him freely about Booth, and feared the latter would make a fizzle, he being reckless and dissipated.

Conover said he was all this time correspondent of the New York Tribune.

Conover further deposed to a proposition being made to destroy the Croton dam at New York to distress manufactories, and to distress the people generally; to Thompson's saying that the whole city would soon be destroyed by fire. Conover said he saw neither Payne nor Atzerodt in Canada, nor did he there ever hear the name of Mary E. Surratt. He said that while in Canada he went by the name of James Watson Wallace.

Mr. Thompson had told Conover, he says, that he thought the assassination of Mr. Lincoln and the cabinet would meet the approval of the government at Richmond. That was in February; and in April, when Surratt arrived from Richmond, Mr. Thompson, says Conover, referred to the despatches brought as having furnished the assent.

Having thus testified to a connexion between the government at Richmond and the assassins in Washington, *via* Canada, Conover next testifies to the infection plot.

He says one Dr. Blackburn packed a number of trunks with infected clothing. Blackburn represented himself as an agent of the Confederate States of America, as Thompson did. Blackburn offered, according to Conover, to pay several thousands of dollars to Mr. John Cameron if he would accompany him to Bermuda to take charge of goods infected with yellow fever and bring them to New York city. Cameron, fearing the fever for himself, refused. Jacob Thompson was the money man furnishing the funds. Jacob Thompson and Mr. Cleary, Conover knows, approved of and were interested in this design, and he thinks Lewis Saunders was present when Blackburn spoke of this enterprise.

In June, (or rather January, according to the correct report of his testimony,) the idea of poisoning the Croton reservoir was discussed. Blackburn knew the capacity thereof, and had calculated the amount of strychnine and other poisons necessary. Thompson thought they could not get enough poison together without exciting suspicion. Blackburn thought he could. Dr. Pallin, of St. Louis, Dr. Stuart Robinson, Lewis Saunders, and Cleary were present at this discussion, approved it, and Dr. Pallin and others thought it could be managed from Europe.

Conover says he saw Surratt in Canada three or four days after the assassination, where, hearing officers were on his track, he fled.

Then, says Conover, "When Mr. Thompson received the despatch from Richmond in April assenting to the assassination, there were present Mr. Surratt, General Carroll, of Tennessee, I think Mr. Castleman, and I believe there were one or two others in the room sitting further back. General Carroll participated in the conversation, and expressed himself as more anxious that Mr. Johnson should be killed than anybody else. He said if the damned prick-louse were not killed by somebody he would kill him himself. His expression was a word

of contempt for a tailor, so I have always understood. At this interview it was distinctly said that the enterprise of assassinating the President was fully confirmed by the rebel authorities at Richmond."

Booth, says Conover, went by the nick-name of Pet, and Conover adds that he saw him in conversation with Thompson and Saunders, and heard him so called by Cleary.

Conover, on the 27th of June, being sworn, was asked if the following testimony was given by him on October 19, 1865, in the St. Albans case.

He said yes; but that it contained the testimony of other Wallaces who testified.

James Watson Wallace on his oath says: "I am a native of Virginia, one of the Confederate States; I resided in Jefferson, in said State; I left that State in October; I know James A. Seddon was secretary of war last year. * * * When I was in Virginia I lived in my own house until I was burned out, and my family were turned out by the northern soldiers.

["The counsel for the United States object to the whole of this evidence as illegal, irrelevant, and foreign to the issue, and consequently decline to cross-examine.]

"J. WATSON WALLACE."

The testimony of Merritt was not, as already stated, accusatory of Mr. Davis, but of those persons who, according to Conover, acted for Mr. Davis, or with his assent, in Canada.

Merritt says he was introduced to George N. Sanders by Colonel Steele; that he, Steele, said of Lincoln that the d——d old tyrant never will serve another term if he is elected; and that Sanders then said he, Lincoln, would keep himself mighty close if he did serve another term.

"About the middle of February a meeting of rebels was held in Montreal, to which I," says Merritt, "was invited by Captain Scott. I should think there were ten or fifteen persons present. Among them were Sanders, Steele, Scott, George Young, Byron, Hill, Caldwell, Ford, Kirk, Benedict, and myself. At that meeting a letter was read by Sanders, which he said he had received from 'the president of our confederacy,' meaning Jefferson Davis, the substance of which was that if the people in Canada and the southerners in the States were willing to submit to be governed by such a tyrant as Lincoln he did not wish to recognize them as friends or associates, and he expressed his approbation of whatever measures they might take to accomplish this object. The letter was read openly in the meeting by Sanders, after which it was handed to those present, and read by them, one after another. Colonel Steele, Young, and Hill, and I think Captain Scott, read it. I did not hear any objection raised."

Merritt goes on to say that Sanders then named a number of persons who were willing and ready, as he said, to engage in the undertaking to remove the President, Vice-President, cabinet, and some of the leading generals, and that there was any amount of money to accomplish the purpose, meaning the assassination—the names of Booth, Harper, Randall, and Harrison, (Surratt,) and one Plug or Port Tobacco (Herold.) Sanders said, according to Merritt, that Booth was heart and soul in this project, because Beall, hung in New York, was his cousin. Sanders thought disposing of the leading men would satisfy the people they had friends in the north, and incline them to grant the south better terms.

Merritt says also that on the 5th of April last, in Toronto, he met Harper and Ford. Next morning Harper, Caldwell, Randall, Holt, and a man called Texas met him at the Queen's hotel and said they were going to the States to kick up the damndest row that had ever been heard of. An hour or two after meeting Harper again, Merritt says Harper told him if he did not hear of the death of Old Abe, and of the Vice-President, and of General Dix in less than ten days, he, Merritt, might put him down as a damned fool. This was the 6th of April.

Booth was mentioned as being in Washington. On the 8th of April Merritt says he found that Harper and Caldwell had started for the States.

Merritt says he then went to Squire Davidson, a justice of the peace, to have them stopped; but Davidson thought the thing too ridiculous to notice.

[The only justice of the peace of that name in Canada denies any such information being given him by Merritt at all.]

Merritt says that in February, 1865, Clay told him in Toronto that he knew all about the letter Sanders had exhibited at the meeting in Montreal, and on Merritt asking what he thought about it, replied he thought the end would justify the means. Merritt swore to Aiken, in cross-examination at the trial, that he had never received one dollar from the government for furnishing any information from Canada, nor had he received anything "from the rebels for services rendered them."

To all this Merritt swore. I cross-examined him under oath, and in that cross-examination he contradicted all the foregoing, and admitted that he had received in actual pay from the government of the United States, through the War Department, for his testimony and services, the sum of six thousand dollars in the aggregate. And that cross-examination, fully disproving his testimony in chief, the committee would not allow the reporter to translate from his notes.

The testimony of Conover being wholly invalidated by his contradictions, would amount to nothing unsupportable, with its evident perjuries unexplained. When Mr. Holt forwarded it with the rest he accompanied the whole with an explanatory argument whose every sentence is redolent with the logic of prosecution, and to me it almost felt as if it revealed something of personal motive in the conviction. There is certainly nothing in it of the *amicus curiæ* spirit, nothing of the searcher after truth, nothing but the avidity of blood of the military prosecutor. The sending of any argument to convince the committee was in itself a step of doubtful propriety, as the committee was supposed by the representatives of the nation to be able to draw their own conclusions from the testimony, and hence were appointed to do so; and the House, by appointing them, had given the strongest evidence that they did not desire to adopt those of Mr. Holt, already tendered. The sending of an argument might be explained as the natural effect of that habit of directing verdicts acquired in the Bureau of Military Justice; but the sending of such an argument I feel compelled to attribute to a desire to place his own views so before the committee as to render investigation by them a mere matter of form; and I believe this was done to hide the disgraceful fact that the assassination of Mr. Lincoln was seized upon as a pretext to hatch charges against a number of historical personages, to blacken their private character, and afford excuse for their trial through the useless forms of a military commission, and through that ductile instrument of vengeance in the hands of power, murder them. I do not say that "Judge Holt" did himself originate the charges or organize the plot of the perjurers, because I do not know that he did; I merely say that a plot based on the assassination was formed against Davis, Clay, and others, and that the plotters did, and even yet, operate through the Bureau of Military Justice, and that the argument forwarded by Mr. Holt to the Committee on the Judiciary looked to me like a shield extended over the plotters—extended, it may be, from no personal animosity to Messrs. Davis, Clay, and the others—extended, it may be, with a desire to save certain officers of the government from the charge of having been betrayed into the mistakes of a vague apprehension, the blunders of an excitement, which it was their province to allay or control, not to increase or share; but still extended over acknowledged, self-convicted, most wicked perjury; and the fact that Mr. Holt did himself pay moneys to more than one of them, to those who acknowledge they swore for money, may awaken suspicion that there was bribery as well as perjury—perhaps not conscious bribery, but the payment for false testimony was

committed ; though it may have been done innocently, it produced the usual effect of subornation of perjury.

For the sake of humanity and justice, I would in this report press upon the House a request that the cross-examination of Merritt be translated and published. I am aware that the Executive, acting under the advice of Senator Wilson, of Massachusetts, and other gentlemen of loyalty no less known, has released Mr. Clay on parole, and that that release is in itself an acknowledgment that the Executive disbelieves not only Merritt's testimony, but also that of every one of the members of the plot. But this is not sufficient. It is due to all the accused that the nation at last see and recognize the flimsiness and malice of these monstrous perjurers.

Let it be recollected that Conover's own exposition of his perjuries was made in Canada during the trial, and then how are we to account for this man's not only being left at large, but being sent as a competent witness to testify before a judiciary committee of this House, and this testimony, already disproved, accompanied by an argument from Judge Holt shaped to induce a belief in it ?

The testimony of Henry Finegas, going to implicate George N. Sanders and Wm. C. Cleary, led me to investigate his character and credibility. I find he was almost reared by a man named Price, in Boston, now residing in Washington, and known as a gambler and a prize fighter ; that Finegas adopted and followed the professions ; that he went with Butler's expedition to New Orleans, entered the service, held a commission, left the service on account of misdemeanors known to General N. P. Banks ; that Finegas next appears a detective in Norfolk, and for certain crimes is expelled the department of the Virginia and North Carolina in company with another detective named Long.

And thus one by one I find each and all of the witnesses brought forward at the so-called trial to implicate Jefferson Davis, Clement C. Clay, Jacob Thompson, and others, to be either convicted perjurers or men of infamous life ; and therefore the first conclusion to which I arrived is that all the testimony taken to establish said complicity, under the pretence of proving a general conspiracy, is wholly unworthy of credit, and that its *ex parte* reception even by that court, and the protection of the witnesses, was an act highly reprehensible, discreditable to the officers of the court, a disgrace to the nation and its military service, under a misapplication of the powers and regulations of which this conspiracy to alarm the people and jeopard the reputation, liberty, and life of innocent men was fostered and partially consummated.

With the testimony taken at the celebrated trial, was forwarded from that strange receptacle of evidence, the "Bureau of Military Justice," affidavits taken since.

Among these was the affidavit of one Campbell, acknowledged by him to be such, to have been sworn to at the said bureau. Campbell was brought before us and asked if the contents of that affidavit were true. He said it was all false. He was then asked, "Why did you make it?" "I was informed by Conover that Judge Holt had offered a reward of one hundred thousand dollars for the capture of Jefferson Davis—that he, Holt, had no authority really to do it. That, now Jefferson Davis was taken, they had not enough against him to justify them in what they had done ; that Judge Holt wanted to get witnesses to prove that Davis was interested in the assassination of Mr. Lincoln, so as to justify him in paying the \$100,000."

"I never lived in New Orleans."

[In his affidavit he had sworn he did.]

"I never was in Richmond."

[He had sworn to residing there.]

"I do not know John Surratt, and never saw him."

[He had sworn to conversations with him.]

"I never saw Jefferson Davis. The evidence was prepared by Conover. I

saw him prepare a portion of it. I never was in the confederate service. I never saw Benjamin. Conover said I should be well compensated for my evidence. My proper name is not Campbell, but Joseph Hoone. My evidence was taken in Judge Holt's office."

Speaking of the other witnesses, Campbell swore:

"Joseph Snevel is not his real name; his name is Roberts."

"Farnham B. Wright is not his real name; it is John Waters."

"John H. Patton is not his real name; it is Smith."

"Sarah Douglas is not her real name; her name was Dunham. (This is Conover's true name.)

"Here was another woman sworn; she gave an assumed name."

One of these women was Conover's wife, the other his sister-in-law.

"Conover told me that if I engaged in it, it was not going to hurt anybody; that Jeff. Davis would never be brought to trial, and that if this evidence got to him he would leave the country. Conover directed me to assume the name of Campbell. There was a person described by that name, who was supposed to be implicated in that affair, and I was representing that party."

"I met Conover first by the appointment of Snevel. Snevel said I could make money out of it. Money was my motive.

"I received \$625. I received \$100 from Conover and \$500 from Judge Holt. I got \$150 at Boston; \$150 at St. Albans.

"I went to Canada to hunt up a witness to swear false, who was to represent Lamar. Snevel and Conover together arranged with me to go to Canada.

"Snevel saw the written evidence I was to swear to after Conover wrote it."

These hurried yet correct extracts from the testimony of Campbell before the committee may seem all sufficient to gauge the value of Conover's evidence, Snevel's, and his own; but lest they should seem to lack confirmation, I append extracts from that of Snevel, sworn May 24, 1866.

The deposition he made before Mr. Holt was read to him. He stated it was "false from beginning to end."

"Conover wrote out the evidence and I learned it by heart. I made it to make money. I received \$375 from Holt. I received \$100 from Conover. Farnum B. Wright's name is really John Waters. John McGill is an assumed name—not his."

[These witnesses, of two names each, were witnesses who had been procured by the Bureau of Military Justice, and who had testified to corroborate the testimony of Conover and Merritt, as Campbell and Snevel did.]

Snevel further says:

"I told Conover that I was coming on here to testify to the truth; that I had not any rest since I swore to what I did. He said I would be in a worse fix then than I was now. This was last Saturday. He said things would be settled, and there would be no further trouble. When the false evidence I was to swear to was read over to me by Conover, Campbell and Conover's brother-in-law, Mr. Ansen, were present.

"Conover told me he knew what Holt would ask me, and Conover asked me the same questions. I gave this false evidence before Mr. Holt. When I got wrong Conover would nod his head. Conover was present when I was sworn by Holt. When Conover would nod I would correct it as near as I could. Campbell and I rehearsed at the hotel in Washington."

Conover said, in his testimony, "I was asked if such a sum would be satisfactory. I said it would. I can't tell how much I received."

"Conover was an agent of the government to hunt up evidence."

Having but little time to end this report, I will not swell it with any additional extracts from the confessions of these people.

Conover was present when Campbell and Snevel testified thus plainly to his villany.

I must inform the House that Conover, *alias* Watson, *alias* Dunham, &c., &c., was not ordered into arrest; that the committee, at his request, permitted him to go to New York *to procure other testimony*. One officer was sent with him, and Conover effected his escape, of course, has not been heard of since, and has probably left the country. Whether any efforts have been made I know not, to catch him; but as he was the teacher and guide of the perjuries committed by the other witnesses procured through the Bureau of Military Justice, it would seem the solemn duty of this government to apprehend, try, and punish so foul a criminal, and in his trial ascertain what temptations, and through whom they came, led him to the manufacturing of so awful a plot. Conover it was who found Montgomery; Conover it was who found Merritt, Campbell, Snevel, and the rest, who rehearsed and taught them, and, as professor of perjury, watched his pupils in their delivery thereof at lesson-time before Judge Holt.

Judge Holt himself was a witness before the committee. He of himself knew nothing of course; but he swore to his own opinions derived from the trustworthy testimony of the parties described, for whose testimony they say the judge himself paid them,

The testimony and revelations of Campbell and Snevel, the absconding of Conover, were not needed by me to aid in forming my opinion of the value of Montgomery's perjuries or those of Conover; still, when they testified so clearly, when the females of Conover's family were shown to have also been sacrificed by him to this demon of falsehood for lucre, the cool turpitude of the whole crew sickened me with shame, and made me sorrow over the fact that such people could claim the name of American, while I wondered who the hidden arch-conspirator behind Conover might be.

The transparency of the whole plot; the imbecility of its organization and management; its ease of discovery by the poorest tests of the cheapest logic, betrayed in the framer so complete a reliance in popular credulity, so thorough an appreciation of the maxim, that the masses of men believe improbable lies more readily than those colored with an air of truth, that I could scarce resist the desire of having Campbell, Conover, Snevel, the women and the rest, all arrested and handed over to the reliable civil tribunals of the country, charged with perjury.

The proof was within easy reach, plain, and cumulative. I felt the honor of the nation required the punishment of these people, were it only in atonement for the credulity of those in its high places who had so readily credited or appeared to credit and act upon such a tissue of absurdities, and so stated my views to the committee.

Not one of these witnesses, nor the parties using and instructing them, if any besides Conover, possessed any peculiar talent for imposture other than impudence and military power to awe all questionings. A man of sense, by trying to give this plot an appearance of probability, would most likely have failed sooner and no less signally, as wise men often do in addressing a multitude, from not daring to calculate upon the prodigious extent of their credulity, especially where the figments presented to them involve the fearful and the terrible. Dr. Pallin, the man Blackburn, Mr. Robinson, and other innocent citizens nearly fell a sacrifice to the fury and fear of poison, arson, and murder which these witnesses created, and owe their safety only to a peculiarity of our national temperament. We are most easy of all people satiated with bloody punishment. Other nations are like the tame tiger which, when once its native appetite for slaughter is indulged in one instance, rushes on promiscuous ravage. We rather resemble the sleuth dog, which, eager, fierce, and clamorous in pursuit of his prey, desists from it as soon as blood is sprinkled upon his path.

The whole of this affair, which would simply pass down to posterity as an absurdity unsurpassed in the history of nations, were it not for the serious dan

gers and consequences it came near entailing, was dragged into the arena of politics.

A few weeks ago a radical editor wrote: "Would that the hand of Booth had been less steady, that of Atzerodt more sure." And a woman in the employ of the government published an accusation against the President as one of the conspirators against the life of Mr. Lincoln. Recollecting that the taking of his own life was a leading object of Atzerodt's and Booth's, one may say of Andrew Johnson what a writer of the Popish plot said against Charles the second: "He should be tried for conspiring his own death, and hanged *in terrorem*."

That this plot to prove designs of poisoning by infection, of complicity with past and future assassinations, should have culminated into such absurdities, is natural, for falsehood run mad outstrips itself, and the dangerous allegations of Conover, Merritt, Hyams Campbell, Snevel, Montgomery, and Finegas, have their prototypes in other lands and times, though to Conover the original idea of advertising for his own apprehension as a false witness is an everlasting claim to a high place in the pages of the *causes célèbres* of this age. Thank Heaven, however, that we are only to blush at the fact that, upon the accusation of the most infamous of mankind, common informers, incited, if not bribed, by offers of reward, of these scourings of jails, and the refuse of the detective office, a government like ours should brand those who had been its ministers with crimes known only to the inferior civilization of the middle ages, we have not to sorrow over their guilt.

Who originated this plot, and placed the government in so embarrassing an attitude? I cannot ascertain. The jealous secrecy and care exercised by the gentleman from Massachusetts in keeping most of the documentary evidence from me for careful perusal, the secrecy attending every step of these proceedings, makes certainty on my part impossible as to the authorship of these ill-linked perjurers; although I do not attribute the course of the committee towards me to any desire on their part to screen the authors, and I am so deeply impressed that there must be guilt somewhere that I earnestly urge upon the House an investigation into the origin of the plot concocted to alarm the nation, to murder and dishonor innocent men, and to place the Executive in the undignified position of making under proclamation charges which cannot, in the face of the accused, or even in their absence, stand a preliminary examination before a justice of the peace.

It was not till noon Friday, yesterday, the last day but one of the session, that the committee and the gentleman from Massachusetts allowed me to read the testimony or parts thereof, that my memory alone should not be trusted to report. It was then within twenty-four hours of its adjournment that Congress, through this committee, allowed me to get ready to prepare this report, when the unfinished business of the session was crowding upon me, and no time was left me to pursue to the head the villanies I detected in the hand, or I might have been able plainly to tell Congress and the country that if in this plot we had a Titus Oates in Conover, so also we had a Shaftesbury somewhere. Had more than twenty-four hours been allowed me, or had those twenty-four hours been less burdened with other duties requiring immediate discharge, I might have been able, in addition to exposing the perjury, to have told this house who concocted it, who screened it, (I do not mean the committee,) why it was concocted and screened, and finally, why a committee of Congress acted towards one of its own members like a Venetian council of ten, whose legislation and inquiries were being kept secret for the benefit of some Foscari.

Need I add, in conclusion, that neither of verbal nor written testimony there is no credible evidence whatever to criminate Mr. Davis as an accomplice, before or after the fact, in the murder of Mr. Lincoln. There is not any evidence worthy of the slightest credit that connects either Mr. Clay, Mr. Cleary, Mr.

Thompson, Mr. Tucker, Dr. Pallin, Mr. Stuart, nor any others charged therewith, now at liberty, with that assassination, directly or indirectly. Nor is there the slightest possible tinge of probability, according to the results of investigation, that any plot or plans ever did exist among those charged therewith to poison or infect with fevers the good people of this nation.

I cannot agree with the statement made in the concluding paragraphs of the majority report, that "it is the duty of the executive department of the government for a reasonable time, and by the proper means, to pursue the investigations for the purpose of ascertaining the truth."

The government, through the Bureau of Military Justice, has pursued its investigations over one year with the rigor of military power and the expenditure of vast amounts, and in Conover, Campbell, Snevel & Co. we have the result of their labors. How long is this man to lie under these imputations without even a preliminary examination? This is worse than the treatment of D'Enghien; worse than the quicker cruelties of an auto da fé. Disagreeing with the majority report on this point, as on most others, I believe it to be the duty of the authorities holding Davis to give him a preliminary examination, as prescribed by the usages and practice of all civilized nations. If in that examination it be found there remains anything unsatisfied, it is the duty of the government to immediately hand him to the civil tribunals, that he and the others accused may have opportunity to show to the world the malice and falsehood of these wicked accusations.

The discoveries of the doings of the Bureau of Military Justice render it a duty that whatever be done in this matter hereafter, be done in a less suspicious locality, and freed from secrecy. Evil motives alone fear the light. The government of this country should have in this matter nothing to hide, or fabricate in darkness.

As regards the charge of treason, that is already before the proper tribunal, and I have only to express surprise that the judicial branch of the government should so long have deferred the trial, and that a prisoner could be ready for trial so long, ask for it so persistently, and yet, in defiance of law and usage, be so long denied it.

The assertion that legislation by Congress is needed ere the crime of treason can bring a man to trial is wholly unfounded, and sounds like a shrinking from the fulfilment of a most plain duty.

A. J. ROGERS.

Dated July 28, 1866.

H. Rep. Com. 104—4

JOHN RIDGWAY.

JULY 27, 1866.—Ordered to be printed.

Mr. A. H. RICE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of John Ridgway, esq., inventor of Ridgway's patent revolving battery, in which memorial he asks that Congress will direct the construction of one of his batteries, and apply it to some war vessel of the United States, respectfully report :

That they have examined the numerous documents submitted to them with the memorial; have heard Mr. Ridgway's exposition of the merits of his invention; have examined a working model of his battery, and witnessed its practical operation in firing. A description of the battery, and the peculiar advantages claimed for it, will be given in a later portion of this report. It appears that Mr. Ridgway's attention was turned to this subject soon after the war began, and that the main idea of his invention was to produce a battery for sea-going and other vessels which should secure entire protection to the gunners, facility of manipulation, and greater range for the guns. As is common in most inventions, the first model was but an incomplete embodiment of the principles and appliances of the present machine. That was first submitted to the Secretary of the Navy in April, 1862, and by him was referred to a board of experienced officers, composed of Rear-Admiral Shubrick, Acting Rear-Admiral Wilkes, and Naval Constructor Pook, who, after examining it, reported as follows on the 9th of May :

"The board of examiners have, as instructed by the department, examined Mr. John Ridgway's original plan for mounting guns upon a vertical wheel in such manner as that, by turning the wheel, each gun can be brought in turn from the bottom to the top of the vessel so as to be fired in a line with the vessel, or in any other direction, the wheel being attached to a frame-work by its centre, and supported upon a pivot at the bottom so as to turn in the same manner as the Monitor's tower.

"The model is imperfect, as it shows no method of turning the wheel, or method of taking up the recoil of the gun. The top of the wheel is protected by an iron cover, made to revolve with the frame-work when it revolves horizontally. This model evinces a great deal of ingenuity, and, if matured so as to carry out Mr. Ridgway's views, might be advantageously used, as it may be trained to any point of the compass, and elevated or depressed at pleasure.

"The principal objection to this plan is the loading of the gun in the hold, as a premature discharge would, in all probability, cause the destruction of the ship. Another objection is, that no arrangement is made for taking up the recoil of the gun. In the crude state of Mr. Ridgway's plan, we cannot recommend it.

"Very respectfully,

"W. B. SHUBRICK,
"Senior Officer.

"Hon. GIDEON WELLES,
"Secretary of the Navy."

In June, 1862, an improved model was presented to the department, and the same board reported thereon as follows :

“ BOARD OF EXAMINERS,

“ *June 13, 1862.*

“ SIR : The board have, as directed by the department, had again under consideration the plans and models of Mr. John Ridgway for mounting cannon in vessels, and heard his explanations on the same.

“ The plan is new, and may be understood by the following description :

“ Over the keelson there is erected a strong frame-work of iron, capable of supporting two vertical circles of equal diameter, well bound and strengthened with the same material, attached to an axis, which is fixed in an upright frame of iron. The whole is supported on a horizontal table, revolving around a central pivot, somewhat like a turn-table. The vertical circles revolve in the vertical plane, and between them the cannon are to be firmly secured near the periphery of the circles. In the model, four guns are thus mounted. The diameter of the circles or wheels is intended to be somewhat greater than the depth of the vessel, so that when a gun is on the upper part of the circle it will have a range over the deck of the vessel when fired. The gun is secured without any breechings or tackle, and there is no need of any elevating screws.

“ The whole frame-work, guns, platform, &c., move in horizontal plane by means of a worm-wheel at the bottom, which is easily turned by hand-power.

“ While the upper gun is being fired the lower one is loaded. Any elevation may be obtained, from the horizon to the zenith, by the movement of the circle.

“ The recoil of the gun is taken up by the counteracting weight of the other guns on the wheel, and Mr. Ridgway proposes also to add a brake with a band to obviate any oscillation, and increase the friction.

“ This mode of mounting cannon has not been experimented on, but the board deem that it has much merit, and that it offers many advantages which the usual plans have not. These are—

“ 1. A greater number of guns can be mounted in less space, and they require fewer men to work them, all of whom also (with the exception of the one who fires the gun) are fully protected from both shot and shell.

“ 2. There is great reduction in weight, and this is placed so as to be lower in the vessel. Mr. Ridgway proposes to cover the upper gun by a parabolic shield, with a sliding port-hole, which rises some three feet above the deck, and protects the gunner, and will revolve with the frame and platform.

“ 3. The ventilation of the vessel can be secured better than in any other plans of which we have any knowledge.

“ 4. The frame and platform are capable of being lowered on their circles when not in use, and the weight supported either upon the deck or below over the keelson.

“ Some objections present themselves to the minds of the board which it may be well to state. The whole frame and weight are, when in use, supported upon a centre pivot, and from the great weight it may have a tendency to settle, but as it is relieved when not in use by a support around its circles, this is in a great measure obviated, and it has a decided advantage in this regard over the centre shaft of the Ericsson battery and that of Captain Coles, in being of much less weight. The board have some apprehensions of difficulties in securing the cannon between the circles, and the action of the axis in which the vertical circles rest and move. But they have but little doubt that these may be provided for and readily overcome, and believing that this plan is worthy of being tested, the board would recommend the trial under the supervision of the inventor. Mr

Ridgway has been requested to prepare estimates of the cost, and submit them, together with drawings, for the action of the department.

"By order of the board:

"Very respectfully,

"W. B. SHUBRICK,
"Senior Officer.

"Hon. GIDEON WELLES,
"Secretary of the Navy."

The estimates and drawings required by the last paragraph of this report were furnished by Mr. Ridgway at considerable cost to him and with but little delay.

In December following, (1862,) by direction of the Assistant Secretary of the Navy, Mr. Fox, Mr. A. C. Stimers, chief engineer United States navy, was directed to make an examination of this battery, and his report thereon was as follows :

"413 BROADWAY, N. Y., December 9, 1862.

"SIR: Agreeably to your request I have examined and considered the invention of turrets, &c., of Mr. John Ridgway, of Boston, by means of his models, drawings, and verbal explanations at this office during the past several days, and beg leave very respectfully to express my opinion upon its merits as follows :

"The arrangements of Mr. Ridgway have many advantages not possessed by any other plans which I have examined, having in view essentially the same end. Among the most important of these are—

"1. Any desired elevation is readily obtained.

"2. Any desired weight of ordnance can be as easily managed when the ship is rolling and tossing about in rough weather at sea, as when it is lying still in smooth water—a very great advantage.

"3. All the loading can be performed below, saving the time and inconvenience of hoisting powder, shot, or shells.

"4. The guns will require no trunnions, cascabel, or any similar projections, which it is now well understood detract greatly from the life or endurance of a gun.

"The inventor claims, further, the advantage of the whole being so low down that there would be less possibility of its being hit by the enemy; but I do not attach much weight to this, as it is necessary to carry the gun itself high enough to fire horizontally in a rough sea, to get practically the second advantage in the above enumeration, which brings it as high as those now in use.

"Among the disadvantages attending this form of turret are :

"1. The beams of the ship must be cut away to permit it to revolve around its vertical axis. This I do not consider a serious disadvantage.

"2. Only one-half the number of guns carried can be placed in a position for firing at the same time.

"3. That portion of the turret which revolves about the horizontal axis is exposed to the fire of the enemy, to an extent and in a manner that renders it liable to be easily placed *hors de combat* in an action against heavy ordnance.

"4. It is more complicated than those at present in use, and in these matters simplicity is of the greatest importance.

"5. It occupies more available space in the vessel than those now in use.

"6. Our present turrets admit the application of the pilot-house, captain's lookout, and steering wheel upon its top, giving it a good elevation from the force of the sea upon a voyage, and for the observation of the captain in time of battle, and the pilot in coming into port. This position not only gives the captain

a fine position for observing the enemy and directing the movements of his own vessel, but it enables him, at the same time, to command in person his battery. All this is lost in Mr. Ridgway's invention.

"Very respectfully,

"A. C. STIMERS,
"Chief Engineer U. S. N.

"Hon. G. V. Fox,
"Assistant Secretary of the Navy."

In pursuance of further investigation of the merits of Mr. Ridgway's invention, the Navy Department, early in the year following, submitted to Professor Benjamin Pierce, of Harvard College, certain inquiries as to whether this battery gave "suitable position for the guns? And what must be the strength of materials to sustain the recoil of a heavy gun?" To these questions Professor Pierce replied as follows:

"1. I presume that all which is submitted to me in the former of the questions, and which is not involved in the latter, refers to the stability of the position. But I do not perceive that there is any reason for distrust in this direction. The common centre of gravity of the wheel and guns can be brought sufficiently near to the centre of motion, and there maintained without any difficulty, and there can be no other source of instability. A short experience will teach the officers the effect which the relative character of the recoil will have in elevating the initial direction of the ball, and they will readily make a proper allowance for it.

"2. With regard to the 'relative strength of the material' which will be required to sustain the recoil of a heavy gun, it is easy to arrive at a satisfactory decision. In the ordinary gun-carriage, the whole blow of the recoil is transmitted to the carriage through the trunnions, so that great strength has to be concentrated upon these points. But in Mr. Ridgway's apparatus the trunnions are dispensed with, the gun is embraced through its whole length by the sustaining wheel, the blow is distributed over a large surface, less strength is required at any one point, so that, regarded simply as a gun-carriage, it is decidedly stronger than the ordinary one.

"It may be worth while, however, to give a more definite estimate of the blow which is given to a gun-carriage. Omitting the effect of the resistance of the air, the blow of recoil communicated to the gun bears the same proportion to the power communicated to the ball which the weight of the ball bears to that of the gun. Thus, if the gun is one hundred times as heavy as the ball, it receives by the recoil only one hundredth part of the blow which the ball carries off with it; so that, in the case of Rodman's fifteen-inch gun, which weighs fifty thousand pounds, if a ball of four hundred pounds is used, the blow communicated to the gun is only a hundred and twenty-fifth part of that which would be given by the direct blow of the ball, or it is that which would be given by a ball of three and one-fifth pounds. How much should be added to this blow for the resistance of the air is not fully determined by observation, and remains a matter of opinion; but I suppose that the best and most experienced judges would not increase it beyond fifty per cent.

"The blow of recoil, then, in a fifteen-inch gun may be assumed to be less than that of a five-pound ball. When the whole of this blow is imparted to the carriage at the trunnions of the gun it may require a skilful engineer to devise a construction capable of resisting its repeated application; but where it is distributed, as in Ridgway's apparatus, over a large extent of sustaining surface, there need be no apprehension as to the possibility of resisting. To go a step further, the blow which the axle of Ridgway's wheel receives from the recoil is even much less than that which the gun communicates to the carriage; it is diminished just in proportion to the added weight of the wheel and the

other gun sustained by it. Now, the whole weight of the wheel and the two guns must be as much as four times that of either gun. The force of the recoil, therefore, as it acts upon the axle of the wheel, is only one-fourth part of that which is given to the trunnions of the same gun upon the ordinary carriage. There need be no fear, then, in regard to its strength.

"Very respectfully,

"BENJAMIN PIERCE."

Again, early in 1864 Mr. Ridgway having, as he supposed, overcome the several objections which had been, from time to time, made to his invention by the permanent commission, by Chief Engineer Stimers, and others, once more submitted his battery to the examination and scrutiny of the permanent commission of the Navy Department, and on the 19th of February the commission reported as follows :

"NAVY DEPARTMENT, PERMANENT COMMISSION,

"February 19, 1864.

"SIR : We have the honor to report that the commission have had under examination and consideration Mr. John Ridgway's vertical revolving battery.

"There are some very great advantages in this invention which would render the commission anxious to recommend it for adoption. Chief among these are the security given to gun and gunners, and the property of being fired at any elevation. This last property is of very great value. It is well known that the maritime bombardment of a place cannot now be undertaken without fitting up mortar vessels, at very great expense, which are useless for any other purpose.

"With Mr. Ridgway's arrangement every vessel becomes a mortar vessel, and the advantages of curved fires are combined, at all times, with those of direct fires.

"Nevertheless, there are serious objections, which would prevent the commission from recommending the adoption of this invention until they are overcome.

"No vessel can carry more than two or three such gun wheels, and the jamming of one of them, even if the difficulty can be remedied (of which we are not convinced) in a few minutes, is a grave evil. The commission think there is great liability to such jamming.

"Another objection is the want of proper means of sighting. The gunner who aims the gun must have not merely an elongated aperture to look through, but a means of sweeping with his eye or glass a considerable portion of the horizon.

"If these two objections were removed the committee would recommend Mr. Ridgway's invention for adoption to the department.

"Very respectfully, your obedient servants,

"C. H. DAVIS,

"Rear-Admiral, Chairman Bureau Navigation.

"JOSEPH HENRY,

"Secretary Smithsonian Institute.

"J. G. BARNARD,

"Brigadier General, Lieutenant Colonel Engineers.

"JAMES SAXTON,

"Assistant Superintendent Weights and Measures.

"Hon. GIDEON WELLES,

"Secretary of the Navy."

Mr. Ridgway appears to have immediately applied himself to removing the difficulties suggested in this report, and again submitted his battery to the

commission on the 7th of May, 1864, and four days after the commission made its final report thereon as follows :

“ PERMANENT COMMISSION, NAVY DEPARTMENT,

“ *Washington, May 11, 1864.*

“ SIR : We have the honor to report that the commission has had under consideration and examination, for a second time, Mr. John Ridgway's revolving battery.

“ Without deciding whether the modifications here proposed by Mr. Ridgway remove all the objections which were specified in its former report, the commission is of the opinion that the system of Mr. Ridgway, as he now exhibits it, has so great positive merits that it is due to the public interest to make a trial of it.

“ The commission accordingly recommend that some one of the new and smaller iron-clads be fitted up with one of his turrets.

“ Very respectfully, your obedient servants,

“ C. H. DAVIS,

“ *Rear-Admiral, Chairman Bureau Navigation.*

“ A. D. BACHE,

“ *Superintendent United States Coast Survey.*

“ JOSEPH HENRY,

“ *Secretary Smithsonian Institute.*

“ J. G. BARNARD,

“ *Brigadier General, Lieut. Colonel Engineers.*

“ J. SAXTON,

“ *Assist. Superintendent Weights and Measures.*

“ Hon. GIDEON WELLES,

“ *Secretary of the Navy.*”

Mr. Ridgway also submitted his battery to the board of judges of the great fair of the Massachusetts Charitable Mechanic Association, held at Boston in September, 1865. This board embraced some of the most eminent, scientific, and practical inventors and machinists in the country. They awarded to Mr. Ridgway a gold medal for his battery, which is the highest award made for any invention, and submitted an interesting and instructive report, from which the following extract is made as embodying at once the opinion of the judges and a lucid and intelligible description of this invention. :

“ Mr. Ridgway proposes to mount the guns in a vertical wheel, revolving in a horizontal axis, which axis is supported by a horizontal table, to which a horizontal rotatory motion is imparted, so that the gun may be freely moved in all directions.

“ Two guns are placed on opposite sides of the wheel, so as to counterbalance each other, and to admit of alternate firing, whereby they may be kept from too rapid heating. The axis of each gun being upon a chord of an arc of the central periphery of the wheel, the axis of the wheel is placed at such distance below the deck as to bring the gun at a suitable height above the deck to admit of any required depression of aim.

“ When, therefore, one gun is in position for firing, or ‘in battery,’ the other gun must be quite low down in the hold, as the bottom of the wheel is placed near the top of the keelson; and as the axis of the wheel is below the deck, and probably in all cases below the surface of the water, great stability must result. The periphery of the wheel is formed into the zone of a sphere of radius equal to its own central radius, and that portion of this zone projecting above the deck is supplemented on each side by the segment of a sphere of corresponding radius, so that the whole arrangement, as seen above the deck, presents the appearance of a spherical zone of small elevation. This entire dome has the horizontal rotary movement before spoken of, and its central zone, which is the

segment of the wheel for the time uppermost, has also a free rotary movement in a vertical plane, on the horizontal axis of the wheel. All these movements are secured by mechanism of the simplest kind, and the movements themselves, being merely rotary, are the simplest and least liable to derangement of any known to mechanics.

"All parts being perfectly balanced, the power required is merely that necessary to overcome the friction of well made and well oiled surfaces, so situated as to be perfectly protected from dirt or injury; and the power of steam is conveniently applied to effect all required movements.

"The cleaning and loading of the gun are done when it is in its lower position, low down in the hold, where it is rendered perfectly secure by the water. The arrangements for loading, aiming, and firing seem to be simple and convenient; but these are susceptible of a great variety of modifications, should such be dictated by experience, for the convenience of officers and men. No porthole is required but the muzzle of the gun itself, and for this no port-stopper is necessary; the recoil of the gun instantly elevates the muzzle out of the reach of hostile shot.

"No costly and troublesome arrangement of springs is necessary to receive the recoil, since this is provided for in the simplest and most efficient manner by the rotation of the wheel, which must be favorable to the durability and safety of the gun.

"No smoke is admitted to the casemate, save that from the vent. Only an officer, or at most an officer and one man, can be required in the upper portion of the turret where the gun is trained, sighted, and fired, the rest being in the lower portion, away from noise and smoke, and perfectly protected by the water.

"There is no limit to the elevation of the gun from any suitable depression below the horizontal to the zenith. Every gun, therefore, may be used as a mortar for vertical fire.

"It is obvious that this arrangement admits of the smallest exposed area of turret or casemate, much smaller than the Ericsson turret, and that greater thickness of armature at this point is, therefore, attainable with a given weight, at the same time the spherical form is in itself the strongest possible against blows from without, so that equal thickness would give greater security than in the cylindrical turret."

From the various reports herein cited and from much other similar testimony, and from their own observation of the simple construction and easy and successful operation of the working model, the committee are brought to the opinion that this invention possesses extraordinary merit, that the objections originally urged against it have been chiefly, if not entirely overcome, and that its coming into use is a question less of fact than of time. It is scarcely reasonable to suppose that any invention which runs counter to the habit and experience of those within whose sphere of duty and of genius it lies, should be at once and universally applauded, however conspicuous its merits may be; nor that any invention which involves new principles or the new application and combination of those which are undisputed could be made capable of demonstrating by a model that complete success which overleaps the bounds of possible failure. This does not form an exception, and yet it gives more promise of success than is common at the outset.

Mr. Ridgway's battery seems to have attracted the attention of the government only after it was embarked in the construction of vessels with batteries and turrets of different description, between the merits of which and of Ridgway's invention opinion can only be settled by actual experiment in the construction of each upon a corresponding scale; nor was it then presented upon any other terms than that the government should proceed upon the then imperfect and unimproved models, and assume all the risks of failure.

It is not believed by those whose judgment may be safely accepted upon this point, that this battery can be applied to a vessel of ordinary construction; but that the hull of the vessel must be specially constructed so as to afford support to the battery and to provide for the unusual opening in the deck, which will be necessary in order to admit the battery and allow of its rotary movements, which are both vertical and horizontal.

The memorial of Mr. Ridgway was referred to the Committee on Naval Affairs on the 16th of April, 1866, and after examination and investigation, the chairman was directed to inquire of the Secretary of the Navy, among other things, whether there was any naval vessel belonging to the government, built or now building, to which Mr. Ridgway's battery could be applied. To this latter inquiry the Secretary replied that, "with the cessation of hostilities, expenditures in testing untried inventions have in a great measure ceased, and there is at this time no vessel to which Mr. Ridgway's apparatus could be applied, nor would it be advisable to construct one for the purpose." No proposition is now presented to the government, nor has there ever been with reference to testing this invention, other than that the Navy Department should build a battery at its own cost and at its own risk, if it should prove to be a failure, and subject to a heavy royalty to the inventor if it proved a success.

For these considerations, therefore, and in view of the fact that Congress has authorized the construction of no new vessels for more than two years, that the system of turreted vessels now in construction and use has far exceeded expectation and is not yet perhaps fully developed; and in further consideration that we are now at peace with the world, after a protracted and expensive war, and that our naval equipment completed and in process of construction is believed to be sufficient for the present needs of the government and the country, especially in the class of ships to which the battery in question could be applied, the committee do not recommend the large appropriation of money necessary to construct a vessel and battery after the plan and upon the terms proposed by this memorialist, and they therefore ask to be discharged from the further consideration of the subject.

HENRY S. DAVIS.

[To accompany bill H. R. No. 820.]

JULY 28, 1866.—Ordered to be printed.

Mr. JOHN H. RICE, from the Committee on Public Buildings and Grounds,
made the following

REPORT.

The Committee on Public Buildings and Grounds, to whom was referred the petition of Henry S. Davis, for pay for work done in the west wing of the Patent Office building, report :

That by act of March 3, 1857, (11 Stat., 224,) an appropriation of \$50,000 was made "for preparing the saloon of the west wing of the Patent Office for the reception of models for patents, and for fitting up and furnishing the same with suitable cases." Of this sum, an unexpended balance of \$10,000 was carried to the surplus fund. A contract was made with Mr. H. S. Davis for a portion of the work, payment to be made according to measurement. After the completion of the work, a misunderstanding arose in regard to the measurement. Mr. Davis received \$11,876 35 under protest, reserving his rights of future adjustment. On an appeal to the Secretary of the Interior, he ordered a re-measurement of the work to be made by three practical mechanics, to be selected by the Commissioner of Patents.

The Commissioner, in his report to the Secretary, says: "The measurement was intrusted by me to Messrs. Angus, Downing, and Morsell, who were highly recommended for competency and honesty, and who were selected on my own motion. These gentlemen having been duly sworn, reported to me that, after a careful examination, and making the deductions by the contract, the amount due Mr. Davis was \$17,596 39, making \$5,720 04 more than had been paid him." For this latter sum the Secretary asked an appropriation, and it was included in the deficiency bill, (H. R. 617,) 37th Congress, but it was stricken out in the Senate, on the ground that it was a private claim.

Upon a careful examination of the facts, the committee are satisfied that the amount is justly due, and report the accompanying bill, and recommend its passage.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE HOUSE OF REPRESENTATIVES

RECEIVED

AT THE OFFICE OF THE COMMISSIONERS OF THE LAND OFFICE

WASHINGTON, D. C.

1871

BALMER & WEBER.

[To accompany bill H. R. No. 821.]

JULY 28, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

R E P O R T.

The Committee of Claims, to whom were referred the petition of Balmer & Weber, of St. Louis, Missouri, and the accompanying papers, would respectfully report:

That from the evidence submitted to the committee it appears that on the 20th day of August, 1861, Major General Frémont, then in command of the western department, appointed one Captain Aug. Waldauer music director of said department, and directed him to organize ten bands in said department; that upon said order, E. M. Davis, acting assistant quartermaster United States army, on duty with General Frémont, indorsed:

“HEADQUARTERS WESTERN DEPARTMENT,

“*St. Louis, September 1, 1861.*

“Any purchases made under the within authority will be settled at this office upon the terms of purchase, upon proper bills and vouchers being presented.

“E. M. DAVIS,

“*Acting Assistant Quartermaster U. S. A.*”

Upon this order and indorsement Captain Waldauer purchased of petitioners musical instruments to the value of \$2,630 75. The instruments were delivered and received, and the proper voucher made out for the same, but before payment was received General Frémont was removed, and his successor refused to pay for the same, upon the ground that General Frémont had no authority to make such purchase. Your committee, without deciding whether he had or had not such authority, believe that the government, by receiving and using said instruments, are in equity bound to pay the value of the property taken and used, and upon this view believe that said Balmer & Weber should be paid the amount of said claim, without interest. The committee, therefore, report the accompanying bill, and recommend its passage.

GEO. W. LANE.

[To accompany H. Res. No. 211.]

JULY 28, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of George W. Lane, superintendent of the United States branch mint at Denver, Colorado Territory, and Assistant Treasurer of the United States, having had the same under consideration, report:

That on the 13th February, 1864, one James D. Clarke, an employé and pay-clerk in the office of memorialist, robbed the mint of \$36,817 05, public money of the United States, with which he absconded, and that memorialist immediately took the necessary steps for his apprehension, which was accomplished; that said Clarke was thereupon indicted, convicted, and sentenced for the larceny, and the money so stolen, except the sum of \$4,419 90, was secured and returned to the government. The balance not found, upon the arrest of Clarke, remains charged against the memorialist on the books of the treasury, and for which he now asks an act of Congress releasing him from its payment.

The committee are satisfied from evidence that the memorialist had good reason to repose confidence in the honesty and integrity of Clarke as an employé and clerk; that every ordinary and reasonable precaution was exercised by memorialist to secure and preserve the public funds and to recover all that remained in the possession of Clarke at the time of his arrest.

The character of Clarke previous to this robbery was above suspicion, and his employment in the mint was recommended by the best citizens and men of business in Denver city.

The committee therefore recommend the relief sought for by the memorialist; that he be credited with the sum of \$4,419 90 stolen by Clarke and never recovered from him, and to that end report the accompanying joint resolution.

TIMOTHY LYDEN.

[To accompany bill H. R. No. 822.]

JULY 28, 1866 —Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Timothy Lyden, of Parkersburg, West Virginia, having considered the same, report :

That the petitioner is a loyal citizen of West Virginia, and that on the 1st day of May, 1864, he was employed as a teamster in the government wagon train of Captain H. D. Patton, assistant quartermaster of volunteers, and depot quartermaster at Martinsburg, West Virginia.

The train having been despatched on the first of May, under the charge of Alfred Allen, wagonmaster, with supplies for troops at Winchester, West Virginia, was attacked on the day following by an armed body of rebels, acting in the capacity of confederate soldiers, who captured the petitioner, (as well as the train,) and he was thereafter held in captivity as a citizen employé of the United States army by the so-called confederate government—first at Danville, Virginia, next at Andersonville, Georgia, and finally at Florence, South Carolina, from which place he was sent to Charleston, South Carolina, and exchanged on the 15th December, 1864. From Charleston he was sent to the hospitals at Annapolis, Maryland, and Washington, D. C., by the United States military authority, for treatment for diseases contracted in the confederate prisons, and was finally discharged March 2, 1865.

These circumstances are sufficiently proven ; and it appears further that, from the immediate capture of the train, the teamsters and employés therewith were not reported to the quartermaster, who thereby failed, either from neglect or from want of knowledge of the facts, to report the names of those teamsters and employés on the proper rolls, with his monthly returns, to the Quartermaster General. The petitioner, as a teamster, was, therefore, never taken up nor paid, as the regulation of the War Department provides, and his only relief is by a special act of Congress.

The claim of petitioner is for thirty dollars per month from date of employment to his discharge from the hospital at Washington. It is presumed that the medical department would not have placed him in the hospital at the time of his exchange if his condition did not demand it. It is no violent presumption that an imprisonment of nearly eight months in rebel prisons would reduce a teamster to so weak a condition of bodily health and strength that he could not drive a six-mule team and army wagon with safety. It further appears that thirty dollars a month was the price allowed for that service by the order of the War Department.

In reviewing the claim of petitioner the committee would remark, that it appears that the petitioner is an honest and loyal person, with capacity and experience as a teamster; that the service upon which he engaged was a necessary and patriotic duty, for which good men were as necessary as for the line of bat-

tle; that, being captured while actually performing duty, he suffered the horrors of eight months' imprisonment, and was, consequently, sick and disabled for two months longer; that by the regulations of the War Department he cannot be paid in the quartermaster's department, where his service was rendered.

The committee, therefore, recommend that the sum of three hundred and two dollars be appropriated for the payment of this claim, and to that end report the accompanying bill.

To the honorable Senate and House of Representatives of the United States:

GENTLEMEN: Your petitioner respectfully represents that he was employed in the quartermaster's department at Martinsburg, West Virginia, on the 1st day of May, 1864, to drive a team, and was captured the next day, and held for ten months and two days as a prisoner, and in the United States hospital at Annapolis and Washington, before he was discharged and permitted to go to his home, at Parkersburg, West Virginia.

He finds, upon application to the Quartermaster General United States army, that the quartermaster, Captain H. D. Patton, failed to report him, and there is no law authorizing his payment. He submits evidence of his employment and captivity as a part of this petition, and respectfully requests that Congress provide for his being paid, either by a special act or general provision; and he will ever pray.

TIMOTHY LYDEN.

QUARTERMASTER'S HOSPITAL,
K STREET NORTH, BETWEEN NORTH CAPITOL AND FIRST STS.,
Washington, D. C., March 2, 1865.

Timothy Lyden, a citizen teamster in Watson's train, under Superintendent Browning, has been a patient in this hospital since January 31, and is to-day discharged.

P. WADSWORTH, JR.,
Resident Surgeon.

The United States to Tymothy Lyden, Dr.

April 8, 1865.—For services rendered as teamster at Martinsburg, West Virginia, in the quartermaster's department, under the direction of Captain A. D. Patton, assistant quartermaster of volunteers, and for a period of captivity in the hands of the rebels, the whole time, including from May 1, 1864, the commencement of service with Captain H. D. Patton, assistant quartermaster, to March 2, 1865, the time of discharge from hospital after reaching the federal lines, being (10) ten months and (2) two days, at \$30 per month—three hundred and two dollars..... \$302 00

STATE OF WEST VIRGINIA, *Wood county, ss:*

I hereby certify that on this 24th day of April, 1865, before me, the subscriber, a justice of the peace in and for the county and State aforesaid, personally appeared Timothy Lyden, of Wood county, in the State of West Virginia, and who, being by me duly sworn, makes oath that he is a citizen of the county and State aforesaid, and loyal to the United States; that he has taken the oath of allegiance as prescribed by the President's proclamation of December, 1863, (a copy of which is herewith filed;) that the foregoing account is just; that the services, for which compensation is claimed were rendered as stated, to wit: That on the 1st day of May, 1864, he was employed by Captain H. D. Patton,

assistant quartermaster of volunteers, at Martinsburg, West Virginia, as teamster, at the rate of thirty dollars per month, and rations; that he began to work as such teamster on the 1st day of May, aforesaid, and started from Martinsburg, West Virginia, on the — day of May, driving a team of horses, in a wagon train of Captain H. D. Patton, assistant quartermaster, under the supervision of Alfred Allen, wagonmaster, in the employ of said Captain H. D. Patton, assistant quartermaster; that while performing his duty as said teamster, and near Winchester, Virginia, (West Virginia,) the wagon train to which he belonged was attacked by an armed body of rebels, who captured him, (with others,) through no fault of his own—he having made every effort in his power to save himself and wagon from capture, but without effect. He further states that he was carried by the rebels as a prisoner from the place of capture to Danville, Virginia, from thence to Andersonville, Georgia, and from thence to Florence, South Carolina; that from the latter place he was taken and delivered to the United States authorities with other prisoners, at Charleston, South Carolina, December 15, 1864, and from thence conveyed to Annapolis, Maryland, and placed in the hospital there for treatment for disease contracted whilst a prisoner, where he remained until January 18, 1865, when he was transferred to the quartermasters' hospital, Washington, D. C., where he remained until March 2, 1865, when he was discharged therefrom, (which certificate is hereto attached;) that the price charged per month was the amount agreed upon between him and Captain H. D. Patton, assistant quartermaster; that no payment has been made or compensation received in any way or from any source whatever, for the whole or any part of said claim; that it has not been transferred to any person or persons, whomsoever, and that the price charged is reasonable and just, and does not exceed the rate paid to teamsters at the post of Martinsburg, West Virginia, during the whole of the period charged; that the said services were rendered the United States, and he claims therefor the sum of three hundred and two dollars, and makes application therefor, under the decision of the Quartermaster General of 1862, authorizing the payment of teamsters while prisoners, (in the case of Colonel Rucker,) and he hereby appoints Barna. Powell, of Parkersburg, West Virginia, his true and lawful agent and attorney for him, and in his name, with full power of substitute, to prosecute and collect the foregoing claim against the United States, and to do any and all acts, either as attorney in fact or by signing his name, until he has converted said claim into current funds of the United States.

TIMOTHY LYDEN.

Witnesses :

JOHN DONOHO,

LAWRENCE KELLEY.

Sworn to before me this 24th day of April, A. D. 1865; and I hereby certify that I have no interest, either direct or indirect, in this claim, and that the affiant is respectable and entitled to credit.

R. S. SMITH,

Justice of the Peace.

STATE OF WEST VIRGINIA, *Wood county, ss :*

I hereby certify, that on this 24th day of April, 1865, before me, the subscriber, a justice of the peace in and for the county and State aforesaid, personally appeared Thomas Glenn, a citizen of Wood county, in the State of West Virginia, and who, being by me duly sworn, makes oath that the foregoing account of Timothy Lyden against the United States is correct and just; that the services were rendered as stated, by said Timothy Lyden; that he, the said Thomas Glenn, was employed as teamster in the quartermaster's department at Martinsburg, West Virginia, by Captain H. D. Patton, assistant quartermaster, on the 1st day of May, 1864, and was in the same train with the said Timothy

Lyden, and that he knows from his own personal knowledge that said claimant was employed as teamster, at the time, place, and rate charged, by said Captain H. D. Patton, assistant quartermaster, and that said claimant performed duty as teamster from the time he charges for services to the 2d of May, 1865, when he was captured by armed rebels and carried off a prisoner; that the rate charged is reasonable and just, and the usual rate paid at the post of Martinsburg, Virginia, at the time, and does not exceed the rate paid at that post during the captivity of the claimant; and that he knew the claimant at the time the foregoing account originated, and was then, and has been ever since, loyal to the United States, and he himself is loyal to the United States, and has no interest, either direct or indirect, in the foregoing account.

THOMAS GLENN.

Witnesses :

JOHN DONOHO,
LAWRENCE KELLEY.

Sworn to and subscribed before me, this 24th day of April, 1865; and I certify that the affiant is respectable and entitled to credit, and loyal to the United States.

R. S. SMITH,
Justice of the Peace.

STATE OF WEST VIRGINIA, *Taylor county, ss :*

I certify that on this 9th day of April, 1866, before me, the subscriber, a justice of the peace in and for said county and State aforesaid, personally appeared Alfred Allen, a citizen of Taylor county and State of West Virginia, and who, being by me duly sworn, makes oath that the foregoing account is just; that the services were rendered as stated, and at the time, rate, and period for which the claimant asks compensation; that Timothy Lyden was employed as teamster, May 1, 1864, by Captain H. D. Patton, assistant quartermaster, at Martinsburg, West Virginia, at the rate of thirty dollars per month; that he drove a wagon in a train of which I had charge, and that near Winchester, Virginia, he was captured by an armed body of rebels through no fault of his own, and carried away a prisoner in their hands, this on the 2d of May, 1864, near Winchester, as before stated; that the rate charged per month was not in excess of the usual price paid teamsters at the post of Martinsburg, West Virginia, during the period for which compensation is claimed; and that he knew the claimant was at the time this account originated, and has been ever since, loyal to the United States, and that he is loyal to the United States, and has no interest, either direct or indirect in the foregoing account.

ALFRED ALLEN.

Witnesses :

W. H. SHIELDS,
J. M. ALLEN.

Sworn to and subscribed before me, this 9th day of April, A. D. 1866; and I hereby certify that the affiants are respectable and entitled to credit, and loyal to the United States.

J. J. ALLEN,
Justice of the Peace.

Oath of allegiance, (as prescribed by the President's proclamation of the 8th of December, 1863.)

I, Timothy Lyden, do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the union of the States thereunder; and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not re-

pealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President, made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

TIMOTHY LYDEN.

STATE OF WEST VIRGINIA, *Wood county, ss:*

Sworn to and subscribed before me, this 24th day of April, A. D. 1865; and I hereby certify that the affiant was, at the beginning of the rebellion, and has been ever since, loyal to the United States.

[SEAL.]

R. S. SMITH,
Justice of the Peace.

STATE OF WEST VIRGINIA, *Wood county, ss:*

I, ———, clerk of the ——— court within and for said county, certify that Timothy Lyden is a citizen of Wood county, State of West Virginia, and was at the time the foregoing account originated, and has been ever since, loyal to the United States, and that he is respectable and entitled to credit. I also certify that ———, esq., whose genuine signature appears to the foregoing acknowledgment, was at the time of subscribing the same, and still, is an acting justice of the peace in and for said county, duly commissioned and sworn, and that his official acts are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Parkersburg, West Virginia, on this — day of April, 1865.

STATE OF WEST VIRGINIA, *Taylor county, ss:*

I, John H. Kunst, recorder of the ——— court, within and for said county, certify that J. J. Allen, esq., whose genuine signature is hereunto attached, was, at the time of subscribing the same, and still is, an acting justice of the peace in and for said county, duly elected and sworn, and that his official acts are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of [SEAL.] said court, at Pruntytown, West Virginia, this 16th day of April, 1866.

JOHN H. KUNST, *Recorder.*

Received, ———, of ———, the sum of ——— dollars and ——— cents, in full of the foregoing account.

—————.

QUARTERMASTER GENERAL'S OFFICE,

Washington, D. C., February 21, 1866.

SIR: In reply to your letter of the 10th instant in reference to the arrears of pay alleged to be due Timothy Lyden, (said to have been captured by the rebels while employed as teamster under the direction of Captain H. D. Patton, assistant quartermaster, in 1864,) you are respectfully informed that Captain Patton does not report the party referred to as having been employed in the quartermaster's department under his direction during the months of May and June, 1864.

By order of the Quartermaster General:

Very respectfully, your obedient servant,

BENJ. C. CARD,

Colonel Q. M. Department and Brevet Brigadier General.

BARNA. POWELL, Esq.,

Parkersburg, West Virginia.

PARKERSBURG, WEST VIRGINIA, *May 3, 1866.*

SIR: I enclose you a petition in favor of a teamster who was captured near Martinsburg the next day after he was hired, and by the negligence of a very inefficient quartermaster, Captain H. D. Patton, assistant quartermaster, (who was subsequently dismissed the service,) Timothy Lyden was never reported, and there is, therefore, no present law authorizing his payment. The evidence is complete and formal as to his employment, being the affidavits of the wagon-master and two other witnesses, one of whom was captured at the same time.

I send this to you direct, hoping, notwithstanding the recent report on the subject of claims, that this is one of a class of cases which the government cannot shrink from paying in some form.

Excuse me for troubling you; but being an Ohioan myself, I feel more at liberty in addressing members from my own than this State, and I wished, for the sake of this boy, to get this claim through.

Respectfully, yours, &c.,

BARNA. POWELL.

Hon. C. DELANO, M. C.,

Chairman Committee of Claims, Washington, D. C.

Presented by the Hon. J. Lyons

It is a pleasure to have the opportunity to present to you the results of the work done by the Lyons family in the field of the history of the Lyons family in the United States. The Lyons family has a long and distinguished history in the United States, and it is a privilege to be able to share with you the results of the work done by the Lyons family in the field of the history of the Lyons family in the United States.

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JOHNSON A. DAWSON.

[To accompany bill H. R. No. 823.]

JULY 28, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of Johnson A. Dawson, of Mount Sterling, Kentucky, having had the same under consideration, report :

That the petitioner, on the first of July, 1862, contracted to carry the mail on horseback on route No. 9556, from Mount Sterling to Stanton, Kentucky, twenty-five miles, twice a week, for \$186 per annum, or \$1 78 per round trip of fifty miles. The petitioner executed his contract faithfully for the term of three years under the most discouraging circumstances. During the said term the prices of forage and subsistence advanced on the route at least one hundred per cent., rendering it doubly expensive for this humble contractor, whose only ambition seemed to be to gain a frugal livelihood by his personal service. The route was nearly abandoned as a thoroughfare of public travel; the roads in the winter season becoming nearly impassable and infested by rebel guerillas and robbers, by whom petitioner was robbed of his clothing, arms, horse and equipage, but succeeding, however, in concealing the mail, and in delivering it according to contract. It is in evidence that while he was frequently waylaid and attacked by rebels he pursued his route, in the night-time if there was danger of being captured by day, and that *the mail never failed*. The petitioner, in view of his losses and sacrifices, asks an appropriation of \$100 per annum additional to his contract price.

The committee have seriously considered the facts and circumstances presented in this memorial, and in view of his devotion to his country, and of the faithful services rendered, though in an humble capacity, under adverse and dangerous circumstances, by the petitioner, recommend the relief prayed for, and therefore report the accompanying bill.

To the honorable senators and representatives of the United States of America in Congress assembled :

Your petitioner would respectfully state, that in July, 1862, he procured a contract for carrying the United States mail from that date up to the 1st of July, 1866, from the town of Mount Sterling, Montgomery county, and State of Kentucky, to the town of Stanton, Powell county, Kentucky, *via* Red River Iron Works, Kiddville, and Levy, being a distance of twenty-five miles. The contract was to carry the mail between said two places, to wit, Mount Sterling, Kentucky, and Stanton, Kentucky, twice during each week, at the rate of \$186 a year.

On the route I have to stop at Kiddville post office, at Levy post office, and at the Red River Iron Works post office. It takes two days to make each trip, and four days during the week to make the two trips. At the rate of \$186 a

year I make only \$1 78 for a trip, as I have to make 104 trips a year. This makes my pay \$1 78 for going 50 miles, (25 miles going and the same returning,) and spending two days in so doing. There is no turnpike on the route, and at times the road seems to lose its bottom. I have Red river to cross twice each trip.

When I took this contract, horses could be bought much lower than at present; board and the cost of living was much less; and when I took the contract I could get my horse shod "all around" for one dollar, and now I have to pay two, and have had to do so for the last two years; and this is but an example of all things as they now exist.

In the spring of 1863 I was robbed on the route by rebel guerillas, who took the mail from me and about \$50 in property, to wit, my overcoat, boots, pistol, &c.

I am a poor man, and am the loser every day by this contract, and the object of my petition is to ask an allowance at your hands for the last three years for my services, in addition to the \$186 per year now allowed me.

I petition and ask you to allow me \$100 per year for the last three years, amounting to \$300 for said three years. This, I think, is no more than ought to be allowed me, in addition to the \$186 now allowed me.

J. A. DAWSON,

U. S. Mail Contractor, Route No. 9556.

JANUARY 24, 1866.

We, the undersigned, Union men of Powell and Montgomery counties, Kentucky, do hereby certify that Johnson A. Dawson is a Union man, as proved during the war and rebellion just closed; that he is a faithful officer and agent, and performs his duty without regard to weather or convenience; and we unite in his petition for a further allowance to him for carrying the mail, considering that the same would be no more than just and proper.

J. HOWARD,

P. M., Mount Sterling, Ky.

JAMES E. KINNAIRD,

G. V. HALL,

P. M., Stanton, Ky.,

WM. A. MOREHEAD, *P. M.,*

WM. H. HOLT,

SILAS M. HAMMAN,

WM. ROBERTS,

B. S. BURGER,

W. B. SMALLWOOD,

P. M., R. R. Iron Works, Ky.,

J. W. SMALLWOOD,

L. ECKLEY,

JNO. JAY ANDERSON,

JAS. C. BROWN,

WM. HOFFMAN, *Cashier,*

A. T. WOOD.

MOUNT STERLING, KY., *January 4, 1866.*

DEAR SIR: I wrote to the Postmaster General a short while since, asking him if he could increase my wages for carrying the mail, and he replied it was not in his power to do so, but if I would get the postmasters on the route to sign a petition stating it was not enough, and place the matter before Congress, he thought that honorable body would make an appropriation for my benefit.

I have got the petition, and got it signed by every postmaster on the route, which I enclose to you, and I hope you will first present it to the Postmaster General for him to sign, if he will, and then bring the matter before Congress.

The distance is 25 miles, and during the winter months the roads are very bad. I have to make two trips a week, and only receive \$186 per year. Counting two days to the trip, which I have to take according to the stipulations of the contract for carrying the mail on this route, I receive 89 cents per day. (You can make the calculation.)

I have carried the mail during the rebellion, often travelling several miles out of the way to avoid guerillas, (as you know the country was infested with,) and dodge into the post office and have the mail distributed frequently of nights.

Hoping you will attend to this for me at your earliest convenience, and let me hear from you immediately if anything more is necessary upon my part to secure the appropriation, I will remain, very respectfully, yours, &c.,

JOHNSON A. DAWSON.

P. S.—The number of the route is 9556.

J. A. D.

Hon. SAMUEL McKEE.

MOUNT STERLING, KY., *January 24, 1866.*

DEAR SIR: You will remember that I sent you a petition some time since for the purpose of trying to obtain additional pay as mail contractor. You wrote me that it was not sufficient; and, in accordance with your suggestion, I have had another one prepared, which you will find enclosed herein. Not a single man has signed it whose Unionism was questionable, as you will see, for you likely know all of them. You know my mail route, its difficulties, and the trouble I have in travelling over it. Would it, therefore, be asking too great a favor of you to go before the committee to whom the petition may be referred and state all the facts of my case to them and do all you can for me in the matter? If you will do so I will remember the favor, and return it if it comes within my power.

I have had some correspondence with the Postmaster General on the subject, and I think he would sign the petition, as he wrote to me to get up a petition and send to Congress. I merely suggest this to you, and you can do as you think best as to asking him to sign it. I hope you will push the matter all you can for me.

Please write to me as soon as you can find it convenient, at my post office, to wit, at Stanton, Kentucky.

I am your obedient servant,

JOHNSON A. DAWSON.

Hon. SAMUEL McKEE, *Washington, D. C.*

EDWARD BLANCHARD.

[To accompany H. Res. No. 824.]

JULY 28, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom were referred the petition of Edward Blanchard, executor of the last will and testament of Evan M. Buchanon, for relief, &c., and the accompanying papers, would respectfully report :

That on September 28, 1864, said Evan M. Buchanon, then on duty and duly commissioned a commissary of subsistence in the army near Winchester, Virginia, was captured by the rebel guerilla Mosby and brutally murdered after surrender; that at the time he had on his person money belonging to the government and vouchers for money expended, amounting to four hundred dollars and eighty-nine cents, which was taken by the guerillas. His administrator prays that said amount be credited to said Captain Buchanon on settlement of his account; and your committee deeming the claim just and proper, therefore report back the accompanying joint resolution, and recommend its passage.

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HENRY RUDD.

[To accompany bill H. R. No. 825.]

JULY 28, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom were referred the petition and proofs of Henry Rudd, of the State of Iowa, having had the same under consideration, report :

That, on the 3d of February, 1864, Captain James A. Ekin, chief quartermaster of the Cavalry bureau, and assistant quartermaster of the United States army, on behalf of the United States, contracted in writing with petitioner for the delivery at Fort Des Moines, Iowa, to the United States government, of 500 head of cavalry horses, at an average price of \$126 70 per head. Said horses were "to be sound in all particulars; not less than five, nor more than nine, years of age; from fifteen to sixteen hands high; bridle wise, and of size sufficient for cavalry purposes; compactly built; in good flesh, and free from all defects."

It was further agreed that said horses, upon delivery at the government stables in Des Moines, should "be examined and inspected, *without unnecessary delay*, by a person or persons appointed by the United States; and after such inspector shall have certified that they are, in all respects, as *contracted for*, and fully equal to the *specifications* aforesaid, they shall be received and become the property of the United States; and all such horses as may be condemned and rejected by said inspector shall be removed from the government stables within *one day* after the contractor shall have been notified of the rejection."

It was further agreed that petitioner should be paid by the United States, at the office of the quartermaster of the United States army, at Washington, city District of Columbia, as follows :

One hundred and twenty-four dollars for each and every horse of the first 200 delivered; one hundred and twenty-eight dollars for each and every horse of the second 200 delivered; and one hundred and twenty-nine dollars and fifty cents for each and every horse of the last 100 so delivered, making an average as above stated.

This contract was executed in Washington, District of Columbia, about fifteen hundred miles from the place where it was to be fulfilled.

The petitioner proceeded at once to Iowa, where he associated with himself J. P. Johnson and Robert Carter, of Henry county, Iowa, for the purchase and delivery of said horses, and for the more speedy and certain fulfilment of said contract.

On the 17th of February following they had over 250 head of the specified quality of horses at Fort Des Moines, Iowa, ready for delivery and inspection, but the government had neither stables nor other means of receiving and disposing of said horses as specified in said contract, and the petitioner was com-

pelled to keep them at an expense of fifty cents per head per day for forty days, or until the 28th of March following, when, for the first time, the government was prepared to receive and inspect them in pursuance of said contract.

On the 5th of February, 1864, but two days following the execution of said contract, the Cavalry bureau, by order of the Secretary of War, issued a circular of "Instructions for inspectors of cavalry horses," prescribing rules and requirements for inspectors entirely different from, and more stringent, than those which prevailed at the time of the execution of said contract, many of which were in absolute conflict with its express terms. By these new instructions the senior inspector was required "to cause the horses furnished under each contract to be placed in the inspection yard at least twenty-four hours before inspecting them. Horses that are rejected for being under age, in poor condition, or temporarily injured by transportation or otherwise, shall be lightly branded on the front part of the fore hoof, near the coronet, with the letter 'R.' When horses are doubtful, before branding, they may be kept three or four days, under guard, at the expense of the contractor, be again originally examined, and then finally disposed of in accordance with the foregoing rules. Horses will be fed at the expense of contractors till they have been branded and accepted."

The committee find that the petitioner had no knowledge of these new instructions until they had presented the said 250 head of horses for inspection on the 17th day of February, 1864. That so soon as he became aware of their nature and extent, and of the new terms thereby imposed upon his contract, he immediately proceeded to Washington and made application to the War Department, through Captain Ekin aforesaid, that said contract be annulled, and that he be released from the delivery of said horses; but Captain Ekin, on the part of the government, utterly refused, reminding him that the Secretary of War had issued an order for the arrest and imprisonment of contractors refusing to comply with contracts, and at the same time assuring him that the rules would be changed, and that the government would indemnify him for all losses sustained by a compliance with the contract. Hon. James Harlan, then United States senator for the State of Iowa, who consulted with the officers of the government on this occasion, as the friend of the contractor, advised him to deliver the horses, as the government was in much need of them, relying upon Congress for indemnity for his necessary and reasonable losses. This advice was likewise given by the governor and the adjutant general of the State of Iowa.

Under these circumstances the petitioner and his said associates proceeded with the purchase and delivery of said horses and the fulfilment of said contract; but soon thereafter, and before the purchase of the remaining 250 head, the government, by its agents, entered directly into the open market for the purchase of horses, establishing depots for that purpose throughout the northwest, raising the price paid for horses at these depots from \$140 to \$150 for cavalry horses, and as high as \$160 for artillery horses.

This change of price, on the part of the government, prior to the time of the purchase and delivery of the horses under petitioner's contract, while it would seem to be a motive for annulling the contract, or for modifying or releasing the petitioner from the strict terms and provisions of the contract, raised the price of horses to the maximum throughout the northwestern country, and particularly the State of Iowa, compelling the petitioner to purchase the remaining 250 horses at those figures. For these untoward events no blame can attach to the petitioner. He complied with his contract, though at a considerable loss, resulting, it would appear, from the immediate action of the government, which no protest could avert, and no forethought could provide against. The government has paid him the contract price only of \$126 70 per head, while the others it paid from \$140 to \$150 for the same quality of horses.

The petitioner claims a loss of \$17,000 under the contract, and there is reason to believe that it approximates to that amount; yet it appears that many of the items of this loss might be excluded in a judicial adjudication of the claim.

The committee, in arriving at what to them appears an equitable allowance of the claim, are of opinion that, from the date of the "*Circular of instructions*" to cavalry inspectors, the 5th of February, 1864, the said contract should be regarded as void, and that the petitioner should be released from its provisions; that the petitioner should be paid for the horses delivered on said contract an average price per head of that paid at the same time and in the vicinage by the government to others for the like quality of horses. The committee find this average price to be \$145 per head, and the amount that petitioner is justly entitled to should be the difference between the amount already paid him on the contract and the amount of 500 head of horses at \$145 per head, which is...

	\$72, 500
Deduct 500 head at \$126 70	63, 350
Amount due petitioner	9, 150

For which amount the committee report the accompanying bill and recommend its passage.

NORMAN HALL.

[To accompany bill H. R. No. 483.]

JULY 28, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the bill H. R. 483, for the relief of Norman Hall, having had the same under consideration, report :

That claimant was, in the month of April, 1861, first lieutenant of the first regiment United States artillery, stationed at Fort Sumter, in the harbor of Charleston, South Carolina, and was on duty at that fort by order of Major Robert Anderson, commanding there at the time of the bombardment and reduction of the same, as acting assistant quartermaster and commissary of subsistence of Major Anderson's command. That at the time and during the bombardment, claimant had in his possession \$774 02 public money of the United States, which he had previously drawn from the assistant treasurer of the United States at Charleston, by the direction of Hon. John A. Dix, then late Secretary of the Treasury of the United States, and also vouchers for the expenditure of \$191 70, as acting assistant commissary as aforesaid, which money and vouchers were placed and kept together in a box for that purpose, in the said fort, and which box, with money and vouchers, on the 12th or 13th of April, 1861, were destroyed and burnt up, and wholly lost, by the fire of the enemy and the explosion of a service magazine in said fort, without the fault or neglect of said claimant.

These facts are sufficiently established by the evidence of Major Generals Dix and Anderson, and, in the opinion of the committee, entitle the claimant to the relief sought for by the introduction of this bill.

The committee, therefore, recommend that the Secretary of the Treasury and the proper officers of that department be directed to credit the claimant, in the settlement of his accounts, with the gross amount of nine hundred and sixty-five dollars and seventy-two cents, for public money and vouchers so lost and destroyed as aforesaid, and to this end recommend the passage of said bill.

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GOLDSMITH BROTHERS.

[To accompany bill S. No. 192.]

JULY 28, 1866.—Read twice, committed to the Committee of the Whole House, made the order of the day for to-morrow, and ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred bill S. No. 192, for the relief of Goldsmith Brothers, of the cities of San Francisco, California, and Portland, Oregon, brokers, with the petition and papers, having had the same under consideration, report :

That it is alleged that Goldsmith Brothers are bankers and brokers in the cities of San Francisco, California, and Portland, Oregon; that on the 20th of July, 1865, the firm in San Francisco received an order, by telegraph, from their partners in Portland, to send them ten thousand dollars 7-30 bonds by the first steamer.

On the 22d of July following, the firm in San Francisco purchased of T. G. Bomeman, acting assistant treasurer United States at San Francisco, as appears by his certificate dated November 13, 1865, two seven-thirty notes, Nos. 364 and 365, of five thousand dollars each; and also, that said firm notified the said assistant treasurer on the 3d of August following, of the probable loss of said notes through the wrecking of the steamer "*Brother Jonathan*."

It is further alleged that said bonds were delivered by the firm, previous to the sailing of the steamer on the 28th of July, to Isaac Weil, a citizen of Portland, then on a visit to San Francisco, to be conveyed to the firm on his return to Portland. That the vessel sailed from San Francisco on the 28th of July, and was lost off the port of Crescent City, approaching the Oregon State line, on the 31st following, with nearly all the passengers, including the said Isaac Weil. That the body of said Weil was discovered on the 17th of August following, on the surf near the shore, adjacent to the town of Eureka, Humboldt bay, California, upwards of sixty miles distant from the place of wreck, by Charles E. Beach, and first examined by him, and afterwards by David P. Worth. That said Beach and Worth found the decedent's watch, *portemonnaie*, containing three dollars in coin; papers, consisting of quartermasters' vouchers and articles of jewelry, on the body, by which means his relatives, and an agent of the firm sent to Eureka for that purpose, fully identified the body as that of Isaac Weil.

It is alleged that the bonds were not, and never have been, found, and that no part of the wrecked vessel was saved.

From the records of the Treasury Department, it appears that neither the bonds nor the coupons attached to the same have been presented to that department.

In view of the numerous losses of government securities by dishonest and fraudulent as well as accidental and unavoidable means, the committee have examined the evidence in this case with much particularity, and cannot find

that such irrefragable proof of the destruction of said bonds is presented as to warrant them in recommending their reissue and payment to the petitioners. For, it is not stated, either in the petition or the proof, on what particular day nor in what specific manner the bonds were placed in the possession of Isaac Weil. There is no evidence that he took them in possession on board the "*Brother Jonathan*," nor in what condition, whether sealed up and addressed, as in a package, or separately, in his pocket, he undertook to convey and deliver them? Whether he was a man of such character for integrity as to be above the suspicion of breach of trust, or whether the circumstances of his possession of said bonds were such as to preclude the possibility of a sale and conversion of the same to his own use, prior to the sailing of the steamer, does not appear in evidence. Neither are the characters, for truth and honesty, of Charles E. Beach and David P. Worth, who first discovered the body of Weil and examined the effects thereon, established by testimony. It is altogether uncertain whether they were honest citizens or wreckers seeking the spoils of the coast. The whole circumstances of the transmission of this large amount are devoid of the common prudence of business men; and it is not, in the opinion of the committee, sufficiently proven that the bonds are not now in existence and circulation, or that the circumstances of their despatch by Isaac Weil prove conclusively their loss and destruction by the wrecking of the "*Brother Jonathan*."

The committee, therefore, unanimously concur in reporting back bill S. No. 192, with the recommendation that it be laid upon the table.

MRS. ABBY GREEN.

[To accompany S. R. No. 112]

JULY 28, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred of Mrs. Abby Green, for remuneration for services rendered to prisoners of war confined in Libby prison, Richmond, Virginia, beg leave to report as follows:

The petition of Mrs. Green sets forth that she was residing in Richmond, Virginia, and in August, 1863, became acquainted with the condition of the Union prisoners confined in Libby prison, and that from that time until February, 1864, she did all in her power to relieve them, and furnished them information relative to the strength of the forces and defences in and around Richmond; that after the escape of Colonel Streight and party she acted as their guide, taking them to a place of safety, where they remained until arrangements were made for their safe passage out of the city.

Her action in this matter becoming known to the rebel authorities, she was compelled to leave all her property and make her escape north, thereby sacrificing a good home and all the comforts of life, and that she has since been dependent on her own unaided exertions for means of support. She prays Congress to grant her such relief for her services as they may deem just and proper.

In support of her statement she files letters from Colonel A. D. Streight, Brevet Brigadier General H. C. Hobart, and Captain John F. Porter, jr., late of the 14th New York cavalry.

Colonel Streight says that shortly after his imprisonment in May, 1863, Mrs. Green put herself in communication with the officers confined in Libby, through one of the colored prison attachés, and offered to do any favor for them that lay in her power, and from that time until February, 1864, when one hundred and nine officers escaped, they were in almost daily communication with her. That she, from time to time, furnished them information as to the fortifications about Richmond and the number of troops guarding the works, as well as the strength of the prison guard. She likewise informed them of the location of the armory and arsenal and the quantity of arms and ammunition on hand, which was considered, at the time, valuable information; they then intended to attempt to break out *en masse*, but were prevented by the treachery of one of their number.

He further states that on the failure of this plan the tunnelling enterprise was undertaken; that when the tunnel was nearly completed they communicated with Mrs. Green, who told them where to go, and they, following her directions, met her and were conducted to the house of Mrs. Quarles, where they remained until arrangements were made for their final escape.

He also says that Mrs. Green assisted Captain Porter to escape, and frequently manifested her sympathy for the sick prisoners by sending them provisions at great risk to her personal safety; that the efforts she put forth to relieve them aroused the suspicions of the rebels and she was compelled to escape

from the city, leaving all her worldly goods, and that he thinks she is well-deserving and should be remunerated by the government.

General Hobart says he was confined in Libby prison from October 1, 1863, till February, 1864; that he knew no person in Richmond who was more untiring in exertions or incurred more peril to assist the officers in Libby to escape than Mrs. Green; that she was the only person who succeeded in passing letters into the prison; that her services to Colonel Streight and party were invaluable, and that he thinks every officer there confined would join in recommending her claim to the favorable consideration of Congress.

Captain Porter says that had it not been for her assistance neither himself, Colonel Streight, nor many others could have succeeded in escaping from Richmond; that, without any exception, Mrs. Green did more to aid the escape of officers and soldiers than any other person he met in Richmond.

The foregoing is the substance of all the papers submitted in this case. Inasmuch as her statement is fully corroborated by the testimony of the officers above, and who are acquainted with the facts, and as she makes no specific claim, the committee respectfully recommend that she be allowed the sum of fifteen hundred dollars, (\$1,500,) being the amount allowed to Mrs. Lucy A. Rice, for similar services, by joint resolution No. 116, 38th Congress.

STEPHEN F. WILLIS.

JULY 28, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

R E P O R T.

The Committee of Claims, to whom was referred the petition of Stephen F. Willis, made the following report:

The claim in this case is for services alleged to have been rendered by the claimant as weigher and inspector at the port of Beaufort, North Carolina, for eighteen months, previous to March, 1857.

There was no evidence whatever before the committee of the services having been rendered except a report of the Committee of Commerce, made in the year 1860.

As your committee does not regard this as satisfactory proof, the petition is reported back, and the committee ask to be discharged from its further consideration.

STATE OF NEW YORK
IN SENATE
January 1, 1901.

REPORT
OF THE
COMMISSIONER OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
JANUARY 1, 1901.

ALBANY:
J.B. LIPPINCOTT & CO.,
PRINTERS,
1899.

THOMAS. C. McGRUDER.

JULY 28, 1866.—Ordered to be printed.

Mr. THORNTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Thomas C. McGruder, made the following report:

It appears from the statements in the petition and the letter of General Meigs that the petitioner was for some time disbursing clerk on the Washington aqueduct, and that in the year 1859 he had stolen from him or lost, and failed to account for at the time, the sum of twenty-five hundred dollars in coin, which had been intrusted to him for the payment of laborers. Mr. McGruder, however, afterwards refunded the money.

There is no proof of the loss of the money, but the mere statement of the claimant, and he avers neither time nor place. It appears that he is regarded as an honest and truthful man.

Your committee think it unsafe to allow compensation upon the simple statement of the claimant, uncorroborated by a single fact proven by a disinterested witness, and therefore ask to be discharged from the further consideration of the petition.

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PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.

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Authorized by Act of October 3, 1917

It appears that the situation in the United States and the world is becoming more and more serious. The war has not only brought about a great change in the political situation, but it has also brought about a great change in the economic situation. The war has brought about a great change in the political situation, and it has brought about a great change in the economic situation. The war has brought about a great change in the political situation, and it has brought about a great change in the economic situation.

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I am convinced that the war has brought about a great change in the political situation, and it has brought about a great change in the economic situation. The war has brought about a great change in the political situation, and it has brought about a great change in the economic situation. The war has brought about a great change in the political situation, and it has brought about a great change in the economic situation.

House documents

Bd.: [224,1.] 1865/66 (1866) = Congress 39, Sess. 1

Washington, DC 1866

Am.b. 3040-224,1

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